

No. 12815

2676

United States  
Court of Appeals  
For the Ninth Circuit.

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NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY,  
Respondent.

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Transcript of Record

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Petition for Enforcement of Order of the  
National Labor Relations Board

FILED

1937

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National Labor Relations Board





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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For the Respondent.



United States of America  
Before the National Labor Relations Board  
Twentieth Region  
Case No. 20-CA-228

In the Matter of

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF  
AMERICA, LOCAL No. 431

COMPLAINT

It having been charged by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, that State Center Warehouse & Cold Storage Company has engaged in and is now engaging in certain unfair labor practices as set forth in the National Labor Relations Act, as amended, 29 U.S.C.A. 141 et seq. (Supp. July 1947), herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the National Labor Relations Board, herein called the Board, by the Regional Director for the Twentieth Region, designated by the Board's Rules and Regulations—Series 5, as amended, Section 203.15, hereby issues his Complaint and alleges as follows:

## I.

State Center Warehouse & Cold Storage Company, hereinafter called the Respondent, is, and at all times material herein has been, a corporation organized under the laws of the State of California. It is engaged in warehousing activities, including the receiving and storing of furniture, grocery products, agricultural products, and other commodities and manufactured items, and maintains its only office and warehouse located at 747 "R" Street, Fresno, California.

During the year 1948, the State Center Warehouse & Cold Storage Company stored merchandise in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) by value, over sixty per cent of which was shipped by rail to or from points outside the State of California. The receipts of Respondent during the year 1948 were in excess of Seventy-five Thousand Dollars (\$75,000.00), representing payment for goods transported in interstate shipments.

## II.

At all times herein mentioned, the Respondent, in the course and conduct of its business as Fresno, California, has caused and continues to cause substantial amounts of merchandise to be shipped to and from points outside the State of California.

## III.

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Lo-



cal No. 431, herein called the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

#### IV.

The Respondent, by its officers and agents, commencing on or about February 10, 1949, and at all times thereafter, did interfere with, restrain and coerce its employees by engaging in the following acts and conduct:

1. On or about February 10, 1949, and at various times thereafter, threatening to close the plant if its employees supported the Union.

2. On or about February 10, 1949, and at various times thereafter, promising extra employment benefits if the employees voted against the Union.

3. On or about February 10, 1949, and at various times thereafter, interrogating the employees with respect to their Union membership.

4. On or about February 12, 1949, and at various times thereafter, stating that the employees who had joined the Union had been discovered by the Company.

5. On or about February 12, 1949, and at various times thereafter, threatening to fire anyone who signed up for the Union.

6. On or about March 11, 1949, and at various times thereafter, terminating extra employment benefits of employees because of Union activities.

#### V.

Respondent, by its officers and agents, did, on or about April 12, 1949, discharge Moses Machoian

from its employ in its Fresno warehouse because of his membership in or activity on behalf of the Union, for the purpose of discouraging membership in the Union or in any labor organization, and at all times since such date has refused to reinstate Moses Machoian because of his membership in or activities on behalf of the Union, for the purpose of discouraging membership in the Union or in any other labor organization.

## VI.

By the acts described in Paragraph V, the Respondent did discriminate and is now discriminating in regard to the hiring and tenure of employment and terms and conditions of employment of said Moses Machoian, and did thereby discourage membership in labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

## VII.

By the acts described in Paragraphs IV, V, and VI above, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, and did thereby engage in unfair labor practices and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

## VIII.

The acts of the Respondent set forth in para-

graphs IV, V, and VI, above, occurring in connection with the operations of the Respondent described in paragraphs I and II, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states of the United States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

### IX.

The aforesaid acts of the Respondent, as set forth in paragraphs IV, V, and VI, above, and each of them, constitute unfair labor practices within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, on this 25th day of October, 1949, issues his Complaint against State Center Warehouse & Cold Storage Company, the Respondent herein.

[Seal]      /s/ GERALD A. BROWN,

Regional Director, National  
Labor Relations Board.

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[Title of Board and Cause.]

### ANSWER

Now comes the Respondent, State Center Warehouse & Cold Storage Company, and answering the complaint on file herein, denies, admits, and avers as follows:

## I.

Respondent denies the allegations of Paragraph I of the complaint; except that respondent admits that it is, and at all times material herein has been, a corporation organized under the laws of the State of California; respondent admits that it is engaged in warehousing activities, including the receiving and storing of furniture, grocery products, agricultural products, and other commodities and manufactured items, and maintains its only office and warehouse located at 747 "R" Street, Fresno, California.

## II.

Respondent denies the allegations of Paragraph II of the complaint.

## III.

Respondent admits the allegations of Paragraph III of the complaint.

## IV.

Respondent denies the allegations of Paragraph IV of the complaint.

## V.

Respondent admits that it did on or about April 12, 1949, discharge Moses Machoian from its employ in its Fresno warehouse; but denies that it discharged Moses Machoian because of his membership in or activity on behalf of the Union, for the purpose of discouraging membership in the Union or in any labor organization, and denies that at all times since such date it has refused to reinstate Moses

Machoian because of his membership in or activities on behalf of the Union, for the purpose of discouraging membership in the Union or in any other labor organization.

VI.

Respondent avers that it did on or about April 12, 1949, discharge Moses Machoian from its employ in its Fresno warehouse, by reason of the fact that Moses Machoian persisted, despite frequent warnings to desist, in smoking while at work, contrary to respondent's rules and regulations, of which Moses Machoian was at all times material well aware.

VII.

Respondent denies the allegations of Paragraphs VI, VII, VIII and IX of the complaint.

Wherefore, Respondent prays that the Board find that no unfair labor practices have been committed by respondent, and that respondent has not acted in contravention of any of the provisions of the National Labor Relations Act, 49 Stat. 449 (1935), as amended by the Act of June 23, 1947, c.120.

/s/ HOWARD B. THOMAS,

Attorney for Respondent.

STATE CENTER WARE-  
HOUSE & COLD STORAGE  
COMPANY,

By /s/ TWODI P. MOSESIAN,

President.

Duly verified.

Received October 31, 1949.



[Title of Board and Cause.]

INTERMEDIATE REPORT AND  
RECOMMENDED ORDER

Statement of the Case

Upon a first amended charge filed June 27, 1949, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, herein called the Union, the General Counsel of the National Labor Relations Board,<sup>1</sup> by the Regional Director of the Twentieth Region (San Francisco, California), issued a complaint dated October 25, 1949, against State Center Warehouse & Cold Storage Company, herein called the Respondent, alleging that the Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act as amended (61 Stat. 136), herein called the Act. Copies of the complaint, the charge, and the notice of hearing were duly served on the Respondent and the Union.

With respect to the unfair labor practices the complaint alleged in substance that the Respondent on or about April 12, 1949, discharged Moses Machoian and thereafter refused to reinstate him because of his union membership and activities, thereby discriminating against him in order to dis-

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<sup>1</sup>The General Counsel and his representatives are herein referred to as the General Counsel and the National Labor Relations Board as the Board.

courage membership in the Union; and that by the above and other stated acts on February 10 and 12, and March 11, 1949, Respondent interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in the Act.

By its answer filed October 31, 1949, Respondent admitted certain of the allegations of the complaint but denied the commission of any unfair labor practices. The answer admitted the discharge of Machoian but pleaded affirmatively that the cause for the discharge was for smoking while at work, contrary to Respondent's rules and regulations and despite frequent warnings to desist. By oral amendment allowed at the hearing it was further averred that while smoking was the immediate cause of the discharge, other cumulative causes were Machoian's "singing, dancing, and loud talking on respondent's warehouse premises during working hours, which disturbed the other employees and interfered with the proper performance of their work and the work of Moses Machoian himself."

Pursuant to notice a hearing was held on February 14, 15, 16, and 25, 1950, in Fresno, California, before George A. Downing, the undesignated Trial Examiner, duly designated by the Chief Trial Examiner. The General Counsel and the Respondent were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertaining to the issues was afforded all parties.

At the conclusion of the General Counsel's case in chief, the Examiner granted Respondent's mo-

tion to dismiss paragraph IV (1) of the complaint which had alleged threats to close the plant if the employees supported the Union, and paragraph IV (2) which had alleged promises of benefits if the employees voted against the Union, in proof of which no evidence had been offered. However, the General Counsel was given leave to move for the reinstatement of said allegations by amendment provided any evidentiary basis existed therefor upon conclusion of the entire case. The General Counsel subsequently moved for such an amendment as to paragraph IV (1), and his motion was granted.

Respondent also moved, on conclusion of the General Counsel's case, for a dismissal of the complaint in its entirety. The motion was denied. Respondent also moved to strike a portion of the testimony of Edward Ejadian concerning an alleged message to Machoian given Ejadian by his mother-in-law, Agnes Azidigian. Ruling was reserved. The motion is now hereby granted since, on completion of the case, the record contained no evidence which connected that part of the message to Respondent.

At the conclusion of the hearing the Examiner denied Respondent's motion to dismiss the complaint insofar as it alleged that Machoian had been discriminatorily discharged. The parties were afforded an opportunity to make oral argument and to file briefs, proposed findings of fact, and conclusions of law. The parties waived oral argument and briefs.

Upon the entire record in the case and from his



observation of the witnesses the undersigned makes the following:

### Findings of Fact

#### I. The Business of Respondent

State Center Warehouse & Cold Storage Company is a California corporation. It is engaged in warehousing activities such as receiving and storing agricultural products, groceries, furniture, and other items.

Paul A. Mosesian & Son, Inc., is a California corporation engaged in the raising, growing, packing, and shipping of various types of fruits, such as grapes, plums, peaches, apricots, nectarines, etc.

The stock in both corporations is owned by Twodi P. Mosesian, Mary P. Mosesian, and Louise P. Mosesian. Those principal stockholders are also the officers of both corporations. The officers of Mosesian, Inc., are President Twodi P. Mosesian; Secretary Mary P. Mosesian; and Treasurer Louise P. Mosesian. The officers of State Center are President Twodi P. Mosesian; Secretary Louise P. Mosesian; and Treasurer Mary P. Mosesian.

The principal offices of both corporations and of their officers are located in the warehouse building, owned by Mosesian, Inc., at 747 R Street, in Fresno. Both corporations use the same office space and the same clerical force consisting of three people, although one of them is carried on the pay roll of State Center and two on the pay roll of Mosesian, Inc. The two corporations have separate pay rolls, separate bookkeeping systems, and separate bank accounts.

Mosesian, Inc., owns in excess of 3,000 acres of fruit lands, all in California. During the year 1948 the sale of fruits and other products from these holdings exceeded \$200,000, over 50 per cent of which was sold outside the State of California.

State Center was set up primarily as an added facility for Mosesian, Inc., to be used as a cold storage unit for those fruits which could not be shipped immediately into the commercial market and to be used as a warehouse depot for other supplies necessary to the running of the ranch properties of Mosesian, Inc. Secondarily, State Center was established to accept merchandise of other companies in the vicinity for storage.

For the year 1948, over 60 per cent of the materials received for storage, such as groceries, furniture, and fiber board boxes, were shipped by rail from points outside the State of California. The value of the merchandise stored during 1948 is unknown but would probably exceed \$100,000. For providing storage and other facilities State Center received \$37,483.75 during the year 1948. During that period it shipped outside the State of California 1 carload of flour, 1 carload of dried fruit, and approximately 17 carloads of grapes which had been stored in its cold storage unit by Mosesian, Inc. It is estimated that the value of the grapes alone exceeded \$25,500.

State Center acts as a local distributor for the following companies: Hulman and Co., Terre Haute, Indiana, manufactures of Clabber Girl Baking Powder; Southern Cotton Oil Co., Gretna, Louisiana, manufacturers of Wesson Oil and Snow Drift

products for the Wesosn Oil and Snow Drift Company; J. B. Ford Products Co., Wyandotte, Michigan, manufacturers of cleaning and scouring powders; Fisher Flour Co., Seattle, Washington; Corn Products Sales Co., New York City, as well as for other companies located in the State of California.

Respondent admits and it is hereby found that the Respondent is engaged in commerce within the meaning of the Act.

## II. The Labor Organization Involved

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, is a labor organization admitting to membership employees of Respondent.

## III. The Unfair Labor Practices

### A. Background and Preliminary Events

The Respondent is a family corporation whose affairs are actively managed by Mrs. Twodi P. Mosesian, a widow, and by her daughters, Louise Mosesian and Mary Mosesian. Violet Misakian, an office employee, is also a cousin of the Mosesians. They and all other witnesses except W. H. Justice and Field Examiner Phoenix, are Armenian.

The offices are located within the warehouse building and the Mosesians spent a large part of their time in the offices during the period pertinent to the issues herein.

W. H. Justice (who is conceded by Respondent

to be a supervisor) is the warehouse foreman and as such supervised the warehouse crew in the loading and unloading of cars and the proper placing and stacking of merchandise in the warehouse. However, the Mosesians themselves also closely supervised the warehouse activities; Mrs. Mosesian testified that "when Justice isn't around, I would go around to supervise to see whether people were doing their work or not."

The regular warehouse crew consisted of a staff of not over four or five employees, although at times itinerant help or ranch hands of Paul A. Mosesian, Inc., swelled the number of persons working in the warehouse.

The evidence herein related chiefly to the period of Machoian's employment, from November 18, 1948, to his discharge on April 12, 1949; and little of significance to the issues occurred prior to the inception of union activities around the middle of January, 1949.

The initial effort to form a union was an abortive one. Machoian first became interested in the Union and after discussion among the warehouse employees (except Harry Ekzoozian),<sup>2</sup> Machoian was selected to get the necessary application papers from the

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<sup>2</sup>It is clear that the other employees omitted Ekzoozian from their union discussions and activities and that he did not become a member or otherwise participate in the activities. Machoian explained at one point that the other employees did not talk to Ekzoozian about the Union because they "didn't trust Harry" (apparently because they felt he was too close to the Mosesians).



Union. He did so, and some of the employees signed them. Two hours later, however, those who had signed changed their minds, turned their papers back, and they were thrown away. Although no explanation was made, it appears probable that it was because only two of the four (excluding Ekzoozian) had signed.

About 2 weeks later the four of them (Machoian, Edward Ejadian, Bob Krikorian, and Bill Eccles, who comprised the whole crew except Ekzoozian) again decided to join the Union and did so. The date of the joining is definitely fixed by Machoian's membership card as January 27, 1949.

On February 8, 1949, the Union filed a representation petition and Respondent was notified of the filing by letter from the Board's Twentieth Region dated February 10, 1949, and received a day or so later. The election was held March 10, 1949, and on March 18, 1949, the Union was certified by the Board as the bargaining representative for all warehouse and truck driver employees of Respondent.

The foregoing findings on facts which were preliminary to the alleged unfair labor practices are based on evidence which is not disputed. However, when the testimony approached the field of the commission of the alleged unfair labor practices, an entirely different picture was presented. On those questions the evidence was in sharp and irreconcilable conflict; in fact, the testimony of some of the individual witnesses was confused, shifting, and self-contradictory on many important details. The

latter circumstance was sometimes accounted for by the fact that some of the witnesses did not speak or understand English too well but nevertheless attempted to answer questions whose meaning they guessed at or which they had not clearly understood. Furthermore, the Examiner is convinced that some of the witnesses were not telling the truth on many essential points, indications of which fact are readily apparent in the rather frequent instances where witnesses were confronted with prior inconsistent statements for the purpose of refreshing their recollections and for impeachment purposes. These circumstances have rendered the resolution of questions of credibility especially difficult.

From his observation of the attitude and demeanor of the witnesses on the stand and their manner of testifying, the Examiner is able to credit in its entirety only the testimony of Bob Krikorian and W. H. Justice, who were called by the Respondent. So far as their testimony is relevant, the findings herein made have been constructed on it as a base, and all other testimony which cannot be reconciled with theirs is not credited.

On matters not covered by the testimony of Krikorian and Justice, the findings are based on a reconciliation of sharply conflicting testimony, with due appraisal of the interest and the relationships between the witnesses. These include the close and clannish family relationship between the Mosesians and between Misakian and the Mosesians; the close personal and social friendship between Michael

Sohigian and the Mosesians and the less close, but nevertheless, social relationship existing between Ekzoozian and the Mosesians. Significance was also accorded to, and appraisal made of, the fact that current employees when called by the General Counsel testified with reluctance against their Employer whereas ex-employees testified freely and without evidence of constraint. Machoian's testimony has also been accepted only in part, due accord having been given in his case to his interest in the outcome and to his exaggerated and somewhat imaginative testimony on some points and to inaccuracies on others, such as his denial of the existence even of the stencilled "No Smoking" signs on some of the pillars in the warehouse.

#### B. Interference, Restraint, and Coercion

Louise Mosesian testified that the Mosesians first learned of union activities about 2 weeks prior to February 10, 1949, when they were informed by their labor consultant that he had received a call from the union representative that the warehouse employees had organized. The consultant informed them that they would have to have an election and they left the matter in his hands. That testimony is credited.

On some date which is established by the evidence as a whole as occurring shortly after the receipt by the Mosesians of the Board's letter of February 10, 1949, Louise Mosesian came into a box car which was being loaded by Machoian, Ejadian, Ekzoozian, Eccles, and Krikorian. Krikorian testified that

Louise asked "if any of [them] had spoken to anybody." They all said they had not. She then asked each one of them individually if he had joined the Union, and each denied having done so. Louise then said, "I know who has already signed, but you don't have to tell me. I am going to find out anyway." She then turned to Ekzoozian and asked him whether "Mama" (as Mrs. Mosesian was frequently referred to in the record) had not "always kept 4 or 5 men working in the warehouse even in tough times," and Ekzoozian agreed that she had. Louise continued, "Mama could always shut (the warehouse) or rent it out."

Machoian's testimony corroborates Krikorian as to the occurrence of the incident and as to the inquiries by Louise as to union membership but differs materially as to the exact content of the statements made. Louise Mosesian categorically denied the incident and denied being in the box car on any such occasion. Ekzoozian, though testifying that Louise did come into the box car on one occasion and speak to a group of the men, stated that she only made some remark to hurry the men up in their work. Ekzoozian testified further that he was never present on any occasion in a box car when Louise made any reference to the Union. Ejadian, although called as a witness on both sides, was not questioned specifically about the incident.

It is found that the incident occurred substantially as testified to by Krikorian, who was corroborated as shown above by Machoian.

Machoian testified to another incident in the box



car occurring about 3 days later when the same group (except Eccles) was present and when Louise came in and accused him of organizing the Union, saying:

“Listen, Mose, you are the guy that makes these people union. You organized the union here, because \* \* \* we asked Mr. Sohigian, and Mr. Sohigian said you do the same thing over his place, you organized the union over there, and you give all the peoples’ name, and you are the one who organized here. We are sure you are the one.”

Machoian testified further that he admitted having organized the Union at Sohigian’s (his former employer), but denied he had done so at the warehouse, and that Louise then left the car. Machoian also testified that he and Ekzoozian then got into a hot argument when he accused Ekzoozian of “squealing” on him about the Union; that Ekzoozian stated he was “going right over to the office and tell them they are going to lay you [Machoian] off. The Union can’t work any more over here”; and that Ekzoozian did not go right to the office.

Louise and Ekzoozian denied that she made the statements attributed to her by Machoian, and Krikorian did not corroborate that part of Machoian’s testimony. Krikorian did corroborate Machoian as to his argument with Ekzoozian, testifying that Ekzoozian told Machoian that Sohigian had said that Machoian had been fired on account of union activities at his place; that they were arguing about it; and that the argument was terminated by Ekzoozian’s threat to have Machoian fired and by

Ekzoozian's departure for the office in an apparent effort to carry out that threat.

Krikorian testified that Louise was not in the box car on the occasion and that only he, Ekzoozian, and Machoian were present on the occasion. Krikorian's version of the incident is credited. According to it, Sohigian made to Machoian statements similar to those which Machoian attributed to Louise. It is therefore, concluded, and found that the statements testified to by Machoian and Krikorian were actually made by Ekzoozian and that Machoian was mistaken in attributing them to Louise.

Ejadian was not questioned specifically about the second incident in the box car nor was he questioned about any argument between Machoian and Ekzoozian. Ekzoozian, though admitting the argument with Machoian, testified that it concerned only the question whether Sohigian had been at home on a certain evening. His testimony is not credited.

Krikorian testified further that he later spoke to Louise asking her if she was going to fire Mose and that she said, "No, he is a good worker." Louise denied ever discussing Machoian with Krikorian. Krikorian's testimony is credited.

That Machoian and his union activities had in fact been a subject of discussion between Sohigian and the Mosesians is established by Sohigian's admissions that he had engaged in such discussions with the Mosesians at their home before the election. Ekzoozian's testimony also discloses that he was present at the Mosesians' home on occasions when Machoian was being discussed with Sohigian.

Krikorian also testified to another occasion when he happened to meet Louise in the warehouse and when she said, "I know you will vote against the union [in the election], but how about Ejadian?", and that he replied that Eddie would vote the same as he. Louise denied the incident. Krikorian's testimony is credited.

Agnes Azidigian, who was Ejadian's mother-in-law and who did housework for the Mosesians, testified that Mrs. Mosesian gave her a message to deliver to Ejadian to the effect that "if Eddie belonged to the union she wouldn't keep him." On cross-examination Azidigian testified the message was that "if warehouse become Union [she] don't keep like these workers—[get] better workers." She testified that she gave the message to Ejadian, and he corroborated her testimony. His testimony of the content of the message closely paralleled that testified to by Azidigian, his final version being that "if we join the union she was going to get better men." Mrs. Mosesian denied having discussed the subject of the Union with Azidigian. Her denial is not credited.

Mrs. Azidigian became quite confused as to the time of the occurrence of the incident, but Ejadian's testimony fixes it definitely as having occurred before the election. It is so found.

The General Counsel also contended that Respondent had, because of Ejadian's union activities, deprived Ejadian on or about March 26, 1949, of extra employment consisting of cleaning the office 30 minutes each morning and of certain yard and

gardening work at the Mosesian home on occasional Saturdays. The preponderance of the evidence does not support that contention. There is no evidence from which an inference can be drawn that Ejadian's union activities were responsible for such acts except the testimony of Azidigian and Ejadian just referred to. Even if such evidence were ordinarily to be considered as affording an adequate basis for such an inference (cf. *Texas Company*, 80 NLRB 862), other evidence introduced by Respondent furnished a reasonable explanation and a credible basis for the changes. Thus, Mrs. Mosesian and Louise testified credibly that on an early morning drive past the warehouse on a trip to their ranches, they had seen Ejadian leaving the warehouse carrying something in a gunnysack. Though they did not wish to accuse him of pilfering, they decided to prevent him from having further access to the warehouse except during normal working hours. Without making any explanation they later simply requested him to surrender the key, and they thereafter assigned the cleaning work to Ekzoozian. At about the same time they stopped calling Ejadian to do the occasional yard work at their home. This was partly due to his slowness in performing the work and to the fact that they found it a more satisfactory arrangement to use the services of a Mexican ranch hand who had begun to occupy the upstairs garage at the home. In any event, the preponderance of the evidence as a whole fails to support the General Counsel's contention that Ejadian's union membership furnished any part of the motive.



It is concluded and found that by the following statements and inquiries, Respondent engaged in interference, restraint, and coercion within the meaning of Section 8 (a) (1):

Louise Mosesian's inquiries in the box car as to the employees' union membership, her statement that she already knew who had signed and her threat, in the face of their denials, to obtain the information elsewhere; her statement or threat on the same occasion that her mother could always shut-down the warehouse or rent it out.

Louise Mosesian's statement to Krikorian relative to his voting against the Union in the election, and her inquiry of him as to how Ejadian would vote.

Mrs. Mosesian's message to Ejadian, delivered through Azidigian, that if the warehouse became Union, she would release those [union] workers and get others.

### C. The Discriminatory Discharge of Moses Machoian

Machoian testified that after the occasion of his argument with Ekzoozian and the latter's threat to have him fired nothing more was said to him until Tuesday, April 12, a pay day. At 5 o'clock, closing time, he went to the office, got his pay check, and walked out onto the platform. Mrs. Mosesian followed him out and called to him. She told him, "You are going to get laid off." He inquired "What is the matter, no work?" She replied, "That is my business, and when we need you, we will call you back by telephone." He was never recalled.

Mrs. Mosesian testified that she had caught Machoian smoking twice on the day of the discharge, once in the morning and once in the afternoon; that Ekzoozian was present on both occasions; and that on the first occasion she had warned Machoian that if she caught him smoking again she would have to discharge him. Ekzoozian corroborated that testimony as to the two incidents, though his testimony was extremely confused and contradictory as to details. Machoian denied that any such incidents had occurred. He admitted freely that he smoked in the warehouse but testified that the other employees, as well as Justice, also did so frequently. He also admitted that he sometimes sang Armenian and Turkish songs but denied that he had ever been reprimanded for it or that he had been threatened with discharge either for smoking or singing.

Mrs. Mosesian testified that when she stopped Machoian on the platform at closing time she told him "You are a dangerous man and I don't want you to be around the place and because of your smoking I have to send you away. I have to discharge you."

Since Machoian's smoking "contrary to respondent's rules and regulations" was pleaded by Respondent as the chief and immediate cause of his discharge and since, according to Mrs. Mosesian's testimony, it was the only cause assigned at the time of the discharge, that defense will be first considered.

First, the credible evidence does not establish Respondent's contention that it had any "rules and

regulations" which prohibited smoking throughout the warehouse. There is evidence that Mrs. Mosesian usually informed the employees when they were hired or later that they should not smoke inside the warehouse and that she and her daughters also sometimes cautioned various employees about smoking in the warehouse. However, as is established by the testimony of Respondent's witness, Justice, such cautions were generally understood to apply only to portions of the warehouse where the more inflammable materials were stored. Indeed, Justice admitted that the Mosesians had never informed him that there was any rule against smoking.

It is true that there were at the north end of the warehouse a number of small "no smoking" signs approximately 1 inch high stencilled on the concrete pillars. But these were of ancient origin, Louise Mosesian admitted, having been placed there in 1918, when the warehouse was being built, by the former owner whose name appeared under the signs. The evidence establishes that they were consistently ignored. Indeed, the stencilled signs were so shrouded in antiquity that Louise had been unable to recall when interviewed by a field examiner several months before the hearing whether they were actually on the pillars at the time of the interview or during the period of Machoian's employment.

Respondent also offered testimony that it had posted at various points throughout the warehouse during Machoian's employment other cardboard "no smoking" signs, but that the men would not

permit them to remain or would scratch them out. That testimony was, however, contradicted and disputed by other testimony offered by Respondent. Thus Ejadian, when testifying as Respondent's witness, stated that there were never any "no smoking" signs [other than the stencilled ones] in the warehouse until June 27, 1949 [the day before his interview by a field examiner], and that for the first time then about five or six paper "no smoking" signs were put up in the warehouse. Furthermore, Respondent's witnesses Justice and Krikorian testified to the existence of no such cardboard signs, and Machoian denied that there were any there during his employment.

It is concluded and found from the evidence as a whole that the only "no smoking" signs in the warehouse during Machoian's employment were the ancient stencilled signs on the concrete pillars, mainly at the north end of the warehouse. It is also clearly established that such signs were wholly ignored and that occasional cautions or reprimands from the Mosesians were shrugged off and openly disobeyed.

Justice frankly admitted smoking in the warehouse and customarily went about with a pipe or cigar in his mouth before the other employees. Although the Mosesians and Ekzoozian consistently contended throughout their testimony that Justice's pipe and cigar were unlit when he was in the warehouse, their testimony is not credited in view of Justice's own testimony to the contrary, as well as that of Krikorian and Machoian.



Indeed, Krikorian testified that Justice smoked all around the men, and that he had also seen Mrs. Mosesian smoke in the warehouse. Krikorian also testified that he, himself, as well as the other warehouse employees, customarily smoked in the warehouse and that he could not say that any one of the them smoked any more than the others. He admitted that as a general rule he and the other warehousemen did not smoke before the Mosesians, that he never smoked in front of Mrs. Mosesian "if [he] could help it," and that she caught him smoking once and reprimanded him for it.

The testimony of Justice and Krikorian, which was offered by the Respondent, is particularly persuasive in rebutting and impeaching the testimony of the Mosesians and Ekzoozian that there was any recognized or enforced rule against smoking in the warehouse. Furthermore, Ejadian's testimony, when called by Respondent, that the first cardboard signs were put up 21½ months after Machoian's discharge, in the face of insistence by the Mosesians that they had been in the warehouse throughout the period of Machoian's employment, persuades the undersigned that Respondent's defense that it fired Machoian for smoking was a synthetic one, manufactured as an afterthought after Machoian's discharge and after service upon it of a copy of the original charge alleging that Machoian had been discharged because of union activities.

These circumstances explain Mrs. Mosesian's failure (as testified by Machoian) to assign a reason for his discharge. Mrs. Mosesian's contrary testi-

mony that she assigned his smoking as the reason is not credited. Nor is her testimony credited that she had "caught" him smoking twice on the day of the discharge and had on the first occasion threatened to discharge him if she caught him again.<sup>3</sup> Although Louise and Mary Mosesian testified that their mother had announced her intention of discharging Machoian for smoking and had, on her return to the office, stated that she had discharged him for smoking, Misakian, who was also present testified that Mrs. Mosesian said only that she "told him not to come back to work anymore." That this was the exact gist of the discharge statement was corroborated by Ekzoozian's testimony that when he inquired of Machoian immediately after the discharge what Mrs. Mosesian had said, Machoian stated that she had told him only "don't come down to work tomorrow."

In summary the following facts are of significance in concluding that Machoian was not discharged for smoking.

There was no rule against smoking at all points throughout the warehouse. It is inconceivable that there could have been one as contended by the Mosesians without Justice having been aware of it.

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<sup>3</sup>It is quite possible that she may have seen Machoian smoking twice on that day, and that she may have called Ekzoozian's attention to it, as they both testified. Such fact, if it is true, is considered and found to have been only part of Respondent's plan to manufacture ostensible grounds for Machoian's discharge.

At most, the occasional cautions were directed at preventing or minimizing smoking in sections of the warehouse where the more inflammatory materials were stored.

Although the Mosesians occasionally cautioned employees against smoking they had in no instance warned or threatened any employee with disciplinary action and certainly not with lay-off or discharge. Mary Mosesian's testimony that on some earlier occasion an employee had been discharged for smoking is not corroborated by any witness and is not credited.

Even assuming the existence of a rule against smoking in all or any part of the warehouse, it was disregarded with impunity by the warehouse foreman and by all the crew (cf. *Paragon Die Casting Company*, 27 NLRB 878). As Mrs. Mosesian aptly explained in denying that she smoked in the warehouse, "if I smoked the others would see me smoking. They would do likewise." But there is credible evidence offered by Respondent (Krikorian's testimony), and it is found, that Mrs. Mosesian did smoke in the warehouse. The employees, having seen her and Justice smoking there in open disregard of the alleged rule and in the face of occasional cautions, followed their example and did likewise, as Mrs. Mosesian conceded was only natural.

In this setting there was no legitimate basis for suddenly discharging Machoian for violating an alleged rule or warning that had been consistently and universally disregarded by all of the employees as well as by Justice and Mrs. Mosesian herself.

The belated pleading at the hearing of additional reasons for the discharge also cast a dubious shadow upon the bona fides of Respondent's original defense. Though termed "cumulative causes," the additional reasons were not shown by Respondent to have had any bearing on Machoian's discharge. Thus, the incidents of singing, dancing, and loud talking, of which Respondent complained in its oral amendment had occurred some time prior to the discharge.<sup>4</sup> Machoian was not disciplined or threatened with discharge. The evidence shows that Louise Mosesian was the one who appeared to be chiefly annoyed by Machoian's exuberance and that the usual content of her reprimands, was to "shut up" or "pipe down" and "we can't concentrate in the office."

Though Louise testified that she reported such incidents to her mother, there is no evidence which connects them with the actual discharge. Thus, Mrs. Mosesian's own testimony was that in discharging Machoian, the only reason she assigned was his smoking. Mary Mosesian testified similarly that her mother had stated only that she had discharged Machoian because of his smoking. Actually, as previously found, no reason was assigned.

Furthermore, Louise Mosesian also testified that she had never discussed with her mother the possibility of Machoian's discharge, and she had also

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<sup>4</sup>The latest occasion which Louise Mosesian could fix in point of time was "just after the first of the year."



given a prior affidavit to a field examiner that she, herself, had nothing to do with Machoian's discharge and that her mother made the decision to discharge Machoian without consulting anyone.

The evidence also disclosed Krikorian's admissions that he, himself, sang loudly in the warehouse and that he was one time reprimanded by Louise for singing. She said simply "if you want to sing, go home and sing."

At various points throughout the hearing Respondent adduced evidence that Machoian was somewhat incapacitated by reason of an injury to his finger, that Ekzoozian and Ejadian complained to Louise and Mary that Machoian could not do his share of the work, and that they, in turn, transmitted the complaints to Mrs. Mosesian. Though formally disclaiming that Machoian's incapacity formed any part of the cause of his discharge, Respondent's counsel continued to elicit testimony to the foregoing effect. What bearing such evidence had upon the discharge is left wholly obscure. It is clear, in any event, that the added reason was not a contributing, much less the proximate, cause for the discharge. The continued eliciting of such evidence would seem to reflect Respondent's doubt of the validity of its pleaded defenses and to constitute an attempt belatedly to suggest an additional reason why Machoian might have been discharged, not why he was.

The evidence summarized above discloses and it is found that Machoian was not discharged for any of the reasons pleaded by the Respondent.

Though an employee may be discharged for a good reason, a poor reason, or no reason at all so long as the terms of the statute are not violated (*N.L.R.B. v. Condensor Corporation*, 128 F. 2d 67 (C.A. 3)), nevertheless a failure to give a reason or the later giving of shifting and implausible reasons may be considered in determining the question of fact as to the real motive for the discharge (cf. *ibid*). Significantly, Respondent does not contend that it discharged Machoian for no reason at all. If any of the causes now assigned had actually existed, no reason appears why Respondent would not have informed Machoian for which one or more of them he was being discharged. Yet, as has been found, no cause was assigned on the occasion.

The series of shifting and implausible reasons advanced by the Respondent fail to explain Machoian's discharge on a nondiscriminatory basis. Although the assertion of such reasons may not of itself establish that Machoian's discharge was based on a discriminatory motive, yet it points unmistakably in that direction.

The Board has held that the discharge of a union employee because of a violation of plant rules was discriminator where the rules did not, in fact, exist. *Wyman-Gordon Company*, 62 NLRB 561. It has also held that evidence that violation of a no smoking rule was customarily overlooked and not impartially enforced is a circumstance in finding that the discharge of a union employee allegedly for violation of the rule was discriminatory. *Lawrenceburg Roller Mills Company*, 23 NLRB 980; and see



Paragon Die Casting Company, *supra*. The Board has also held a discharge to be discriminatory although there were "no smoking" signs in the department and the employee had been previously reprimanded for smoking and threatened with a lay-off where it appeared that the penalty of discharge for smoking had rarely been invoked and that it was customary for employees to smoke secretly in the shop. Atlas Press Company, 32 NLRB 863.

There is other more affirmative evidence in the present record that Respondent discharged Machoian because of his union membership and activities.

First, as has been found, Machoian took the lead in the discussions and concerted activities which led to the formation of the Union. Despite the denials by the Mosesians, the record discloses that they were well aware of the part Machoian was playing. This is established by Sohigian's testimony that he had discussed Machoian's union activities with the Mosesians at their home (obviously, at a time when Ekzoozian was also present), and by Ekzoozian's later accusation of Machoian as the organizer of the Union, by his threat to have Machoian fired because "the union can't work here anymore," and his departure for the office to carry out his threat.

That Respondent did not immediately effectuate Ekzoozian's threat does not detract from the conclusions herein reached. The election was then imminent, and for obvious reasons it would have been desirable to avoid any appearance of discrimination or of interference with the election and to postpone any action to a time when the suggestion of

discrimination would not so readily appear.

Certainly the record as a whole discloses that respondent was determined from the outset to defeat union organization in the warehouse. That is plainly apparent from the statements, inquiries, and threats summarized under the preceding section of the Report. Certainly also Respondent's intention to discriminate is disclosed by Mrs. Mosesian's message to Ejadian that she would discharge current employees if the warehouse should become Union. Though that threat was not carried out immediately nor in its entirety yet in the relatively short space of 33 days after the election, Respondent discharged the leader in the union activities and later asserted in justification thereof the series of shifting and implausible reasons which have been found to be baseless.

It is therefore found on the basis of all the evidence that Respondent, on April 12, 1949, discharged Machoian because of his union membership and activities and has at all times since refused to reinstate him; that by said acts, Respondent discriminated against Machoian for the purpose of discouraging membership in the Union, and that it thereby engaged in unfair labor practices within the meaning of Section 8 (a) (3) of the Act. By said acts also Respondent engaged in interference, restraint, and coercion of its employees in the exercise of the rights guaranteed in Section 7 of the Act and thereby engaged in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

#### IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set out in Division III hereof, occurring in connection with the operations of the Respondent described in Division I hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

#### V. The Remedy

Since it has been found that the Respondent engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It has been found that Respondent discriminatorily discharged Moses Machoian on April 12, 1949, and thereafter discriminatorily failed and refused to reinstate him. Since Machoian testified that on or about January 24, 1950, he decided not to return to his former position, it will not be recommended that Respondent offer to Machoian reinstatement thereto. It will, however, be recommended that Respondent make Machoian whole for any loss of pay that he may have suffered by reason of such discrimination by payment to him of a sum of money equal to that which he normally would have earned as wages from April 12, 1949, to January 24, 1950, less his net earnings during such period (see Matter

of Crossett Lumber Company, 8 NLRB 440).

It having been found that Respondent has engaged in certain acts of interference, restraint, and coercion it will be recommended that the Respondent cease therefrom.

The violations of the Act which the Respondent committed are in the opinion of the Trial Examiner persuasively related to other unfair labor practices prescribed by the Act, and the danger of their commission in the future is to be anticipated from the Respondent's conduct in the past. The preventive purposes of the Act will be thwarted unless the order is coextensive with the threat. In order, therefore, to make more effective the interdependent guarantees of Section 7, to prevent a recurrence of unfair labor practices and thereby minimize the industrial strife which burdens and obstructs commerce and thus effectuate the policies of the Act, it will be recommended that the Respondent cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case the undersigned makes the following:

### Conclusions of Law

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of Moses Machoian, thereby discouraging



membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

### Recommendations

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record of the case, the Trial Examiner recommends that State Center Warehouse & Cold Storage Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, or in any other labor organization of its employees, by discriminatorily discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment;

(b) Interrogating its employees concerning their union membership or activities or as to voting in the election; threatening to ascertain who were members; threatening to shut the warehouse down or rent it out because of union activities; and threatening to release current employees and to hire others if the warehouse should become Union;

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

(2) Take the following affirmative action, which the Trial Examiner finds will effectuate the policies of the Act:

(a) Make whole Moses Machoian for any loss of pay he may have suffered by reason of Respondent's discrimination against him by payment to him of a sum of money equal to the amount which he normally would have earned as wages during the period from the date of the Respondent's discrimination against him to January 24, 1950, less his net earnings during said period;



(b) Post at its Fresno, California, warehouse copies of the notice attached hereto marked Appendix A. Copies of said notice to be furnished by the Regional Director for the Twentieth Region, shall, after being duly signed by Respondent's representative, be posted by Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, the Respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Board issue an order requiring the Respondent to take the afore-said action:

As provided in Section 203.46 of the Rules and Regulations of the Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington, D. C., an original

and six copies of a statement in writing, setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he, or it, relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its find-

ings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 8th day of May, 1950.

/s/ GEORGE A. DOWNING,  
Trial Examiner.

## Appendix A

### Notice to All Employees

#### Pursuant to

The Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, or any other labor organization of our employees, by discriminatorily discharging or refusing to reinstate any of our employees, or discriminate in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

We Will Not interrogate our employees concerning their union membership or activities or as to voting in the election; we will not threaten to ascertain who are members of the Union; we will not threaten to shut the warehouse down or rent it out because of union activities, nor threaten to release current employees and to hire others if the warehouse should become Union.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

We Will make whole Moses Machoian, for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become or remain members of said Union or any other labor organization.

Dated .....

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY,

(Employer).

By .....,

(Representative). (Title).

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Title of Board and Cause.]

## EXCEPTION TO THE INTERMEDIATE REPORT AND RECOMMENDED ORDER

Now comes the Respondent, State Center Warehouse & Cold Storage Company, and excepts to the Intermediate Report filed herein by Trial Examiner George A. Downing in that:

### Exceptions to Findings of Fact

1. It is found in the first paragraph of Subsection III, page 3, that Violet Misakian is a cousin of the Mosesians. This infers a much closer relationship than exists as the evidence shows that their grandmother was the same person but they had different grandfathers.

2. It is found in the second paragraph of Subsection III, page 3, that W. H. Justice is a warehouse foreman and as such supervises the warehouse crew in the loading and the proper placing and stacking of merchandise in the warehouse. This finding infers that W. H. Justice is a general supervisor whose duties include those above mentioned, whereas the evidence is that W. H. Justice is only a supervisor of those enumerated activities and no others.

3. It is found in the third paragraph on page 4 that Machoian first became interested in the Union. This inference is that Machoian was the first to become interested in the Union. This inference is not substantiated by the evidence.



4. The Examiner states in the sixth paragraph on page 4 that he is convinced that some of the witnesses were not telling the truth because of the "rather frequent instances where witnesses were confronted with prior inconsistent statements for the purpose of refreshing their recollections and for impeachment." The Examiner infers that this reflects on the credibility of the testimony which is favorable to the Respondent. Not one of Respondent's witnesses was shown to have made a prior inconsistent statement. The Trial Examiner must be basing this observation on some statements or writings which are not found in the evidence.

5. It is found in the seventh paragraph on page 4, that all testimony, other than that of Bob Krikorian and W. H. Justice, which cannot be reconciled with their testimony, is not credited. This finding cannot be supported by the testimony nor does the Trial Examiner carry out this finding as he, in many instances, credits Machoian with truthfulness.

6. The finding in the first paragraph on page 5, that there is a close clannish family relationship between Misakian and the Mosesians is not substantiated by the evidence.

7. The finding in the first paragraph on page 5, of interest (thus discrediting his testimony) due to the social relationship existing between Ekzoozian and the Mosesians, is not substantiated by the evidence, which evidence indicates a much stronger social relationship between Ekzoozian and Machoian.



8. The finding in the first paragraph on page 5, that current employees, when called by the general counsel, testified with reluctance against their employer, whereas ex-employees testified freely and without evidence of constraint, is contrary to the evidence and is, in fact, completely rebutted by the Trial Examiner by giving great credence to the testimony of W. H. Justice who is a present employee.

9. The finding in the fourth paragraph of Section B, page 5, of the occurrence in the box car, is not substantiated by the evidence.

10. The finding in the third paragraph on page 6, that Sohigian made certain statements to Machoian, is not substantiated by any testimony in the record.

11. The finding in the fifth paragraph on page 6 is not substantiated by the evidence.

12. The finding in the sixth paragraph on page 6, that Machoian and his Union activities had been a subject of discussion between Sohigian and the Mosesians, is immaterial and ambiguous as there is no evidence that this discussion occurred prior to the charge of unfair labor practices. The finding infers that a discussion was prior to the charge; however, this inference is not substantiated by the evidence.

13. The finding in the seventh paragraph on page 6, that Louise Mosesian said, "I know you will vote against the Union, but how about Ejadian," is not substantiated by the evidence.

14. The finding in the eighth paragraph on page 6, that Mrs. Mosesian gave Agnes Azidigian a message to deliver to Ejadian, is not substantiated by the evidence.

15. The finding in the first paragraph on page 7, that the time of the occurrence of the alleged incident was before the election is contrary to the evidence.

16. The conclusion in the third paragraph on page 7, that Louise Mosesian questioned, and made certain statements to the employees concerning Union membership is not substantiated by the evidence.

17. The conclusion in the third paragraph on page 7, that Louise Mosesian made a statement or threat, that her mother could always shut down the warehouse or rent it out, is not substantiated by the evidence. This conclusion is also an erroneous interpretation of the testimony concerning the alleged incident, which error is caused by taking the statement out of its context. In its proper context the testimony is to the effect that Louise Mosesian asked Ekzoozian whether or not "Mama" Mosesian hadn't kept the plant open in bad times and thus kept the men working when she could always have closed it down.

18. The conclusion that Mrs. Mosesian sent a message to Ejadian that she would release those Union workers and get others was not based on a finding as no such finding was made. There is no

finding that "those Union workers" would be released as there was no testimony to that effect.

19. The statement on Line 6 of page 8, that Ekzoozian's testimony was extremely confused and contradictory as to details, is not substantiated by the record.

20. The statement on line 20, page 8, that the credible evidence does not establish that there were no rules and regulations which prohibit smoking throughout the warehouse, is immaterial and ambiguous. The offices were in the warehouse; it was never alleged that smoking was prohibited in the offices. The statement merely knocks down a straw man and presents an erroneous inference.

21. The finding on line 33 of page 8, that Justice admitted that the Mosesians had never informed him that there was any rule against smoking, is not substantiated by the evidence. He stated that he did not know of a rule applying to the entire establishment but he did not testify that the Mosesians had never informed him of one.

22. The statement on line 36 of page 8, that there were only a small number of "No Smoking" signs approximately one inch (1")) high, stencilled on the concrete pillars, presents an inference that is contrary to the evidence; whereas the evidence shows that the letters were one inch (1") high but that the entire sign was approximately 12"x6", the evidence being a visit to the warehouse.

23. The statement or rather "allegation," on line 43 of page 8, referring to an alleged interview

of Louise by a "field examiner," is not based on any evidence. This "field examiner's" report was not admitted in evidence. The reference to the contents of this report which was not in evidence illustrates the prejudice and bias of the Trial Examiner.

24. The statement concerning Louise Mosesian's memory in regard to the stencilled signs is contrary to the evidence.

25. The statement on line 51 of page 8, that Ejadian stated that there were never any "No Smoking" signs, other than the stencilled ones, in the warehouse until June 27, 1949, is not substantiated by the testimony. Any evidence on this point was admitted over strenuous objection by Respondent that Ejadian had no independent recollection. The affidavit which the attorney for the general counsel read to Ejadian did not refresh his memory and could not be used as evidence as it was never submitted as past recollection recorded.

26. The finding on line 60 of page 8, that the only "No Smoking" signs on the premises were the "ancient" stencilled signs, is contrary to the evidence.

27. The conclusion on line 63 of page 8, that it was clearly established that such signs were wholly ignored and that occasional cautions or reprimands by the Mosesians were shrugged off or disobeyed, is immaterial to the issue of the motive for the discharge and is not supported by the evidence and is contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference

herein all exceptions heretofore made to findings of fact upon which such conclusions are based and said conclusions are improper on the basis of the facts found.

28. The findings in the first paragraph of page 9, that the Mosesians' and Ekzoozian's testimony that Justice's pipe and cigar were unlit when he was in the warehouse is not credited in view of Justice's testimony, as well as that of Krikorian and Machoian, is immaterial, misleading and not substantiated by the evidence. The evidence does not indicate any conflict in the testimony as to any single occurrence. It was testified by Justice that sometimes he smokes but most of the time the pipe or cigar was unlit. Ekzoozian and the Mosesians testified that they never saw Justice smoking. There was no inconsistency in testimony as to any one particular incident. Therefore, the testimony of Ekzoozian and the Mosesians cannot be discredited. It must stand for the fact that they never saw Justice smoking in the warehouse and, therefore, did not believe that he smoked contrary to the rules.

29. The finding in line 16 of page 9 that the testimony of Krikorian rebuts and impeaches the testimony of the Mosesians and Ekzoozian, that there was no recognized or enforced rule against smoking, is contrary to the testimony of Krikorian.

30. The finding on line 16 of page 9, that the testimony of Justice rebuts and impeaches the testimony of the Mosesians and Ekzoozian, is not substantiated by the evidence.



31. The finding on line 18 of page 9, that Eja-dian testified that the first cardboard signs were put up two and one-half ( $2\frac{1}{2}$ ) months after Machoian's employment, is contrary to his testimony.

32. The finding on line 22 of page 9, that the Mosesians insisted that the signs had been in the warehouse through the period of Machoian's employment, is contrary to the testimony and infers that the Mosesians insisted that all cardboard signs were up during that period, which inference is contrary to the testimony.

33. The conclusion on line 24 of page 9, that Respondent's defense was a synthetic one, is contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusions are based and said conclusions are improper on the basis of the facts found.

34. The finding on line 30 of page 9, that Mrs. Mosesian failed to assign a reason for Machoian's discharge, is contrary to the evidence.

35. The finding on line 33 of page 9, that she did not catch Machoian smoking twice on the same day of his discharge and had not threatened to discharge him, is contrary to the evidence.

36. It was found or stated on line 38 of page 9, that Misakian testified that after discharging Machoian, "Mrs. Mosesian said only that she 'told him not to come back to work any more'," whereas



Misakian testified that Mrs. Mosesian said that she "told him not to come back to work any more." Misakian did not testify that this was the only thing Mrs. Mosesian said. Misakian testified further that she hadn't been paying much attention.

37. The conclusion on line 40 of page 9, that Mrs. Mosesian said only "don't come back to work tomorrow," is contrary to the evidence and based on hearsay related by the complaining witness and, as such, cannot sustain a finding of fact or conclusion.

38. It is stated on line 40 of page 9 that Ekzoozian testified that Machoian, immediately after his being discharged, told Ekzoozian that Mrs. Mosesian "had told him only 'don't come down to work tomorrow'," whereas the testimony and evidence is that Machoian told Ekzoozian that Mrs. Mosesian had said "don't come down to work tomorrow." Ekzoozian did not testify that Machoian told him that Mrs. Mosesian had only said "don't come down to work tomorrow."

39. The finding on line 46 of page 9, that there was no rule against smoking in all points throughout the warehouse, is immaterial and irrelevant as it was never alleged that smoking was prohibited in the offices which are in the warehouse, and certainly Machoian knew he was not to smoke where he was working, having been warned twice in the same day.

40. The conclusion on line 49 of page 9, that it is inconceivable that there could have been a rule, as contended, against smoking, without Justice having been aware of it, is improper upon the basis of the facts found and of the testimony in the record.

41. The finding on line 50 of page 9, that there were only occasional cautions, is misleading and contrary to the evidence, which evidence, including the testimony of Krikorian, proved that cautions were given on every occasion possible.

42. The finding on line 51 of page 9, that any cautions were, at most, directed at preventing or minimizing smoking in sections of the warehouse where inflammable material was stored, is contrary to the evidence. The "at most" is an innuendo, contrary to the evidence, including Krikorian's testimony.

43. The finding in the first paragraph on page 10, that "in no instance was any employee warned or threatened with disciplinary action and certainly not with lay-off or discharge," is contrary to the evidence. The Trial Examiner did not believe the corroboration of six witnesses to other facts, why would he believe any corroboration of this fact.

44. The finding on line 13 of page 10, that Mrs. Mosesian smoked in the warehouse is not supported by the evidence.

45. The conclusion on line 18 of page 10, that there was no legitimate basis for suddenly discharging Machoian is not supported by the evidence and

is contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusion is based and said conclusion is improper on the basis of the facts found.

46. The statement on line 22 of page 10, that the "belated pleadings at the hearing of additional reasons for the discharge also cast a dubious shadow upon the bona fides of Respondent's original defense," is not based on any evidence or testimony as the pleadings were not introduced as evidence and could not be so introduced. There is not one iota of testimony on the part of Mrs. Mosesian which is shifting as to the reason for discharge. In fact, each and every Mosesian testified that Machoian was discharged because Mrs. Mosesian caught him smoking for the second time in one day. There was no shifting of reasons here. The purpose of the hearing was to determine the motive for the discharge of Machoian. If counsel for Respondent, during the course of the testimony, feels that there is evidence for cumulative causes indicative of the low regard of the employee in the eyes of the employer (whose motives are up for determination) it is counsel's duty to bring them out. It is inconceivable that such could cast a shadow on the bona fides of Respondent's defense. On the contrary, it is essential to place the employee in the setting as seen by the employer on the day of his discharge.

47. The findings in lines 33 to 58 of page 10 are excepted to as they indicate a complete incomprehension of the issues involved in the determination of the motive for a person's actions.

48. The "allegations" in line 43 of page 10, that Louise Mosesian had given a prior affidavit to a field examiner is another reference to the contents of an alleged affidavit not in evidence. This use of material not in evidence is prejudicial. It is a clear indication of the bias of the Trial Examiner.

49. The conclusion on line 1 of page 11 is contrary to the evidence. The Trial Examiner permitted the pleading of the additional defenses and he now uses that fact as evidence against Respondent. This is contrary to every known concept of evidence in the American judicial system.

50. The conclusion on line 5 of page 11 is contrary to the evidence and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofor made to findings of fact upon which said conclusion is based and said conclusion is improper on the basis of the facts found.

51. The innuendo on line 10 of page 11, that the Respondent gave no reason or gave a shifting and implausible reason has no basis in the evidence.

52. The findings reiterated on line 16 of page 11, that no cause was assigned for the discharge, is contrary to the evidence.

53. The finding on line 19 of page 11, that Respondent used a "series of shifting and implausible

reasons'' to explain Machoian's discharge, is so contrary to the evidence that it indicates gross prejudice.

54. The conclusion on line 21 of page 11, that such reasons point unmistakably to a discriminatory motive, is contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herin all exceptions heretofore made to findings of fact upon which said conclusion is based and said conclusion is improper on the basis of the facts found.

55. The N.L.R.B. decisions cited on page 11, lines 24 to 37, are irrelevant and have no fact similarity with the evidence in this case as none of them are decided upon facts where the dischargee was working in a warehouse and was reprimanded in the morning for smoking and warned and caught smoking that very afternoon and later failed to come to the office when directed.

56. The conclusion on line 49 of page 11, that there is affirmative evidence that Machoian was discharged because of Union membership and activities, is contrary to the evidence.

57. The finding on line 44 of page 11, that Machoian took "the lead" in the discussions and concerted activities which led to the formation of the Union, is contrary to the evidence and is not substantiated even by Machoian's testimony.

58. The finding on line 43 of page 11, which infers that. prior to Machoian's discharge, the



Mosesians were aware of the alleged Union activities of Machoian, is contrary to the evidence.

59. The finding on line 45 of page 11, that Sohigian testified that he definitely discussed Machoian's Union activities prior to Machoian's discharge, is not supported by Sohigian's testimony.

60. The findings on lines 47 to 50 of page 11 are not supported by the evidence.

61. The "conclusions" on lines 50 to 57 on page 11 are so unsupported by any findings of fact or evidence that they must be classified as mere allegations which indicate the Trial Examiner's prejudice.

62. The "conclusions" on line 58 on page 11 through line 4 on page 12 is so obviously contrary to the evidence that it constitutes a gross distortion of the record.

63. The finding or the statement on line 4 of page 12, that Respondent discharged the leader in the Union activities, is a blantant unsupported finding so contrary to the evidence that the very existence of a statement in this Intermediate Report discloses prejudice.

64. The reiteration on line 5 of page 12, that Respondent set forth a series of shifting and impulsive reasons, is again contrary to the evidence and indicates a wilful disregard of the issues in this case.

65. The conclusion in the paragraph beginning on line 7 of page 12, that “on the basis of all the evidence that Respondent, on April 12, 1949, discharged Machoian because of Union membership and activities \* \* \*,” is not supported by the evidence and is contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusion is based and said conclusion is improper on the basis of the facts found.

66. The finding in the paragraph beginning with line 6 on page 12 made “on the basis of all the evidence” cannot support the conclusion that Respondent engaged in an unfair labor practice within the meaning of Section 8(a)(3) of the Act as a finding on “all” evidence, is not sufficient under Section 10(c) of the Act to find unfair labor practices.

67. The conclusion on line 16 of page 12, that Respondent engaged in unfair labor practices within Section 8(a)(1) of the Act, is not supported by the necessary findings on the preponderance of the evidence as required by Section 10(c).

68. Upon the close of the case for the general counsel, Respondent moved to dismiss the complaint on the ground of the insufficiency of the evidence to prove any or all of the charges brought against Respondent. The Trial Examiner thereupon denied said motion, to which adverse ruling of the Trial Examiner the Respondent was entitled to an automatic exception, to which they still except.

69. The suggested remedy in the paragraph beginning on line 35 of page 12 is based upon findings of fact and conclusions which are not supported by and are contrary to the evidence as stated herein in the specific exceptions to the "findings of fact" of the Intermediate Report and Respondent, in support of its exception to said recommendation repeats, realleges and incorporates by reference said specific exceptions, including that taken on the ground that the findings do not sustain the conclusion.

### Exceptions to Conclusions of Law

1. The conclusion in paragraph 2 of the "Conclusions of Law" subject to the exceptions of the Findings of Fact taken herein, are not supported by the evidence and are contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusions are based and said conclusions are improper on the basis of the facts found.

2. The conclusion in paragraph 3 of the "Conclusions of Law," subject to the exceptions of the Findings of Fact taken herein, are not supported by the evidence and are contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusions are based and said conclusions are improper on the basis of the facts found.

3. The conclusion in paragraph 4 of the "Conclusions of Law," subject to the exceptions of the Findings of Fact taken herein, are not supported by the evidence and are contrary to the evidence, and Respondent reiterates and realleges and incorporates by reference herein all exceptions heretofore made to findings of fact upon which said conclusions are based and said conclusions are improper on the basis of the facts found.

### Exceptions to the Recommended Order

1. The recommendations in paragraph 1(a), (b) and (c) and 2(a), (b) and (c) are based upon findings of fact and conclusions which are not supported by, and are contrary to the evidence as stated herein in the specific exceptions to the "Findings of Fact" of the Intermediate Report and Respondent, in support of its exception to said recommendations, repeats, realleges and incorporates by reference said specific exceptions, including that taken on the ground that findings do not sustain the conclusion.

2. The recommendation in paragraph 2(b) is unnecessary and unreasonable at the present time. Following an election held by the N.L.R.B., the local Union No. 431 was certified and is now the bargaining representative of the employees of the Respondent warehouse. The employees are all organized and represented by the Union of their choice. In these circumstances, no useful purpose would be served by the posting of these signs. In fact, it might be injurious to the present peaceful employee-employer relationship.

And for General Exceptions, Respondent States:

This report should be disregarded on the following grounds:

(a) The Trial Examiner bases his findings on matters not in evidence which is directly contrary to the requirements of 10(b) of the Act.

(b) He deliberately misquotes testimony of the witnesses.

(c) He ignores testimony favorable to Respondent even when given by those he claims to credit.

(d) He finds bias for all those persons whose testimony is favorable to Respondent without giving like credence to the bias of the complaining witnesses, and further attacks the credibility of witnesses for Respondent on a basis that does not exist in the record.

(e) He credits everything unfavorable, even when testified to by his so-called discredited witnesses.

(f) He draws conclusions contrary to common sense. How can one operate a warehouse full of inflammables and yet permit smoking in the area where the goods are stored?

(g) He requires corroboration of the uncontradicted and unimpeached testimony of Mary Mosesian that they had previously discharged a man for smoking. Yet Machoian, who was, in numerous instances, proved to lie, is credited without corroboration.

(h) He discredits Ekzoozian because of his social relationship with the Mosesians. Whereas, the



testimony is clear that there was a much stronger social relationship with Machoian.

(i) His report is inconsistent with his own statements of evidence, as set forth in the transcript, derived from his visit of the premises.

(j) His report is replete with misquotations of testimony, twisting of the evidence, unsubstantiated innuendos and inferences, inconsistent findings and refusal to follow the rules of evidence.

Wherefore, Respondent respectfully prays that the complaint against it be dismissed and for such other and future relief as may be just and proper.

Dated: Fresno, California, May 23, 1950.

KIMBLE, THOMAS, SNELL,  
JAMISON & RUSSELL,

/s/ HOWARD B. THOMAS,  
Attorneys for Respondent.

To: National Labor Relations Board,  
Washington, D. C.

Received May 26, 1950.

United States of America  
Before the National Labor Relations Board  
Case No. 20-CA-228

In the Matter of

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, Local 431, AFL.

DECISION AND ORDER

On May 8, 1950, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other unfair labor practices as alleged in the complaint, and recommended that these particular allegations in the complaint be dismissed.<sup>1</sup> Thereafter, the Respondent filed exceptions to the Inter-

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<sup>1</sup>No exceptions were filed to so much of the Intermediate Report as recommends that certain allegations in the complaint be dismissed. Accordingly, we shall adopt such recommendations without passing upon the issues involved.

mediate Report and a supporting brief.

The Board<sup>2</sup> has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings,<sup>3</sup> conclusions, and recommenda-

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<sup>2</sup>Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel.

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<sup>3</sup>The Intermediate Report contains certain misstatements of fact and inadvertences, none of which affects the Trial Examiner's ultimate conclusions, or our concurrence in such conclusions. Accordingly, we make the following corrections: (1) Neither Krikorian nor Justice testified about the cardboard "no smoking" signs. The Trial Examiner found that they testified that there were no cardboard "no smoking" signs; (2) the Trial Examiner found that Ejadian testified that there were no "no smoking" signs, other than stencilled ones, in the warehouse prior to June 27, 1949; Ejadian testified that there were no "no smoking" signs there prior to that time; (3) in describing the incident between Ekzoozian and Machoian, the Trial Examiner referred to statements made to Machoian by Sohigian; the statements were made by Ekzoozian instead of Sohigian; (4) at footnote 3 of the Intermediate Report the Trial Examiner implies that the Respondent's defense as to the discharge of Machoian was preconceived. Elsewhere the Trial Examiner suggests that it was an afterthought. As we agree with the Trial Examiner that Machoian was not in fact discharged for violating a "no smoking" rule it becomes unnecessary to reconcile this apparent inconsistency.

tions of the Trial Examiner with the following additions and modifications:

1. We agree with the Trial Examiner and find that the Respondent interfered with, restrained, and coerced its employees in violation of Section 8 (a) (1) of the Act by the coercive statements and conduct of Louise Mosesian and Twodi Mosesian, involving interrogation as to union activities and threats to close the warehouse, as set forth in the Intermediate Report.

2. We also find, as did the Trial Examiner, that the Respondent discriminatorily discharged Moses Machoian in violation of Section 8 (a) (3) of the Act. However, in this connection the evidence does not sustain, and we do not adopt, the following findings by the Trial Examiner: (1) That Machoian was the first employee to become interested in the Union and was the leader of the union activities in the warehouse; and (2) that the Respondent had no rule against smoking in the warehouse.

The anti-union animus of the Respondent's officials is demonstrated in the threats and union interrogation we have found violative of Section 8 (a) (1). Moreover, the credited testimony of Krikorian and Sohigian<sup>4</sup> established that the Respondent's officials believed that Machoian was responsible for bringing the Union into the warehouse. The Re-

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<sup>4</sup>We do not rely upon matters set forth in Sohigian's prior statement used by the General Counsel to refresh Sohigian's recollection.

spondent's defense that it discharged Machoian for violating a long standing rule against smoking in the warehouse is most unpersuasive. Even if we, unlike the Trial Examiner, were to accept the testimony of Mary Mosesian that the Respondent had at some unspecified time once discharged an employee for such an infraction, the vast preponderance of the credited testimony clearly establishes that at least during the period of Machoian's employment the "no smoking" rule was rarely enforced, and when enforced brought forth no more than an admonition not to smoke. Machoian was never warned that smoking in the warehouse would result in his discharge, and he was not told at the time of his discharge that such was the reason for his discharge. In these circumstances we are satisfied that Machoian was not discharged for violating a "no smoking" rule but rather for his union activities.

### The Remedy

As Machoian decided, on or about January 24, 1950, not to return to his former employment we shall not order the Respondent to reinstate Machoian. We shall, however, order the Respondent to make Machoian whole for any loss of pay from the date of his discharge to January 24, 1950. Since the issuance of the Trial Examiner's Intermediate Report, however, the Board has adopted a method of computing back pay different from that prescribed by the Trial Examiner.<sup>5</sup> Consistent with

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<sup>5</sup>F. W. Woolworth Company, 90 NLRB No. 41.



this new policy, we shall order that the loss of pay be computed on the basis of each separate calendar quarter or portion thereof during the period from the Respondent's discriminatory action to January 24, 1950. The quarterly periods, hereinafter called "quarters," shall begin with the first day of January, April, July, and October. Loss of pay shall be determined by deducting from a sum equal to that which Machoian would normally have earned for each quarter or portion thereof, his net earnings,<sup>6</sup> if any, in other employment during that period. Earnings in one particular quarter shall have no effect upon the back-pay liability for any other quarter.

We shall also order the Respondent to make available to the Board, upon request, payroll and other records to facilitate the checking of the amount of back pay.<sup>7</sup>

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<sup>6</sup>By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere, which would not have been incurred but for this unlawful discrimination, and the consequent necessity of his seeking employment elsewhere. *Crossett Lumber Company*, 8 NLRB 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered earnings. *Republic Steel Corporation v. NLRB* 311, U.S. 7.

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<sup>7</sup>*F. W. Woolworth Company*, *supra*.

## ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that State Center Warehouse & Cold Storage Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or in any other labor organization of its employees, by discriminatorily discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment;

(b) Interrogating its employees concerning their union membership or activities or as to voting in the election; threatening its employees with ascertaining who are union members; threatening to close or rent the warehouse because of union activities; threatening replacement of its employees if they join the Union; or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or any other labor organization, to bargain collectively through representatives of their own

choosing, to engage in concerted activities for the purpose of collective bargaining, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Moses Machoian in the manner set forth in the section entitled "The Remedy" for any loss of pay he may have suffered from the date of the Respondent's discriminatory discharge to January 24, 1950;

(b) Upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(c) Post at its warehouse in Fresno, California, copies of the notice attached hereto and marked Appendix A.<sup>8</sup> Copies of said notice to be furnished by the Regional Director for the Twentieth Region, after being signed by a representative of the Re-

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<sup>8</sup>In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be inserted before the words "Decisions and Order," the words "Decree of the United States Court of Appeals Enforcing."

spondent, shall be posted by the Respondent, immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

It Is Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the Respondent violated Section 8 (a) (1) of the Act by promising extra employment benefits to its employees if they voted against the Union, and by terminating extra employment benefits of its employees because of their union activities.

Signed at Washington, D. C., this 24th day of August, 1950.

PAUL E. HERZOG,  
Chairman.

JOHN M. HOUSTON,  
Member.

PAUL L. STYLES,  
Member.

[Seal]

NATIONAL LABOR  
RELATIONS BOARD.

## Appendix A

Notice to All Employees  
Pursuant to  
A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the **National Labor Relations Act**, as amended, we hereby notify our employees that:

We Will Not discourage membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or any other labor organization of our employees, by discriminatorily discharging or refusing to reinstate any of our employees, or discriminate in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

We Will Not interrogate our employees concerning their union membership or activities or as to voting in the election; we will not threaten to ascertain who are members of the union; we will not threaten to close or rent the warehouse because of union activities, nor threaten to replace our present employees if they join the union.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 431, AFL, or any other labor organization, to bargain collectively in concerted activities for the purposes of collective bar-



gaining or other mutual aid or protection, or refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We Will Make whole Moses Machoian, for any loss of pay suffered as a result of the discrimination against him.

All our employees are free to become, remain or refrain from becoming or remaining members of said union or any other labor organization except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8 (a) (3) of the Act. We will not discriminate in regard to hire, tenure of employment, or any other term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

STATE CENTER

WAREHOUSE & COLD

STORAGE COMPANY,

(Employer)

By .....,

(Representative)

(Title)

Dated: .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Before the National Labor Relations Board  
Twentieth Region  
Case No. 20-CA-228

In the Matter of:

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY,

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS, WARE-  
HOUSEMEN AND HELPERS OF AMER-  
ICA, Local No. 431

Tuesday, February 14, 1950

Pursuant to notice, the above-entitled matter came  
on for hearing at 10:30 a.m.

Before: George A. Downing,  
Trial Examiner.

Appearances:

HARRY BAMFORD, ESQ.,  
ROCCO C. SICILIANO, ESQ.,

821 Market Street,

San Francisco, California,

Appearing on Behalf of the General  
Counsel.

HOWARD B. THOMAS, ESQ.,

WILLIAM N. SNELL, ESQ.,

KIMBLE, THOMAS, SNELL,

JAMISON & RUSSELL,

1001 Helm Building,

Fresno, California,

Appearing on Behalf of the State Cen-  
ter Warehouse & Cold Storage Com-  
pany, the Respondent.

PROCEEDINGS

\* \* \*

Mr. Bamford: Also I believe that the Respondent is ready to stipulate that the employer is engaged in commerce within the meaning of the Act.

Trial Examiner Downing: You will so stipulate?

Mr. Thomas: I will so stipulate.

Trial Examiner Downing: The stipulation will be received.

Mr. Bamford: Parenthetically, the events to be described in this proceeding occurred in the first part of 1949. For background purposes and to fix the dates for certain of these events, the following stipulation is proposed:

On March 18, 1949, Local 431, International Brotherhood [11\*] of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F.L., were certified by the National Labor Relations Board as the collective bargaining representative for all warehousemen and truck drivers employed by the State Center Warehouse and Cold Storage Company.

The petition in this case, 20-CA-482, was filed February 8, 1949, and the Company was notified of the filing of this petition by a letter from the Twentieth Region, NLRB, dated February 10, 1949. The election was held March 10, 1949.

Trial Examiner Downing: Is that stipulation acceptable?

Mr. Thomas: So stipulated, your Honor.

Trial Examiner Downing: It will be received.

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\* Page numbering appearing at top of page of original Reporter's Transcript.

## MOSES MACHOIAN

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

\* \* \*

By Mr. Siciliano:

Q. Did you ever, while working there, become interested in a Union?           A. I didn't catch you.

Q. When you were working there, did you ever become interested in joining a Union?

A. Yes, sir.

Q. What union was that?           A. A.F.L.

Q. A.F. of L. what?           A. 431, No. 431.

Q. Of which union was it? A.F. of L. what? [14]

A. A.F. of L.

Q. Do you know the name of the union?

A. Well, Warehouse Union.

Q. The Warehouse Union? The Teamsters and Warehouse Union?

A. Yes. They got the number, 431.

Q. What did you do? How did you join the Union?           A. We talked to each other. [15]

\* \* \*

Q. Did your employers say anything to you about the Union?

A. No, they didn't say nothing about it. We didn't talk about it, because they told us, "Don't talk about it in there at all."

(Testimony of Moses Machoian.)

Trial Examiner Downing: Who said not to talk about it?

The Witness: The Union.

Q. (By Mr. Siciliano): The Union told you not to talk about your signing the paper?

A. Yes, as long as we signed the paper, wait until the [23] time.

Q. So then what happened? Did anything happen?

A. Well, after six weeks, I guess, the Mosesians got a letter from the Union that the people wants a union over there and we are going to come over and work for the Unions.

Q. The Mosesians got a letter, you say?

A. Yes.

Q. From the Union, you say? A. Yes.

Q. And then was anything said to you?

A. Well, when they got the letter, Louise came in the car and——

Q. Wait a minute. Louise came in to what car?

A. Box car. We were unloading the car.

Q. Who is "we"? A. Louise Mosesian.

Mr. Thomas: Your Honor, it hasn't been brought out how Mr. Machoian knew that the Mosesians got the letter.

Mr. Siciliano: I am coming to that.

Mr. Thomas: Will you bring that up first?

Q. (By Mr. Siciliano): How do you know that the Mosesians got a letter?

A. She told us in the car. Louise told us in the car.



(Testimony of Moses Machoian.)

Q. What did she say?

Mr. Thomas: If your Honor please, will you please state [24] the time, and who was present?

Mr. Siciliano: I was going to do that.

Q. Now tell us who was present in the car.

A. Eddie Ejadian, Harry Ekzoozian, and Bob Krikorian, and Bill Eccles.

Q. And yourself? A. Myself, yes.

Q. Louise came into the car, and what did she say?

A. She says, "Listen, fellows, did you sign any paper? Did you go over to the Union and sign a paper? Did Mr. Justice give you a paper to sign? Is anybody coming in here and make you sign the papers?" We all said, "No." "We didn't sign no papers, and nobody made us sign a paper at all."

Trial Examiner Downing: Will you fix the date of that, Counsel?

Q. (By Mr. Siciliano): When was this?

A. That was about the first of March.

Q. About the first of March?

A. I don't remember.

Q. You can't remember the exact time?

A. I don't remember the exact time.

Q. So you said what to Louise, when she asked you all these questions?

A. We were all in the car.

Q. How did she ask them? To all of you as a group? [25]

A. To all of us, all the group.

Trial Examiner Downing: Which one of you answered?

(Testimony of Moses Machoian.)

The Witness: We all answered. We said, "No. We didn't sign any paper and nobody made us sign any paper at all."

Q. (By Mr. Siciliano): Now I want to try to get, Mr. Machoian, the time down a little better. You say that you signed the application that I showed you a few minutes ago some time in January.

Mr. Thomas: If your Honor please, the application speaks for itself. It is dated.

Mr. Siciliano: Well, his memory is some time in January.

Trial Examiner Downing: His testimony was some time in January.

Q. (By Mr. Siciliano): You say that you signed the application some time in January?

A. I don't remember exactly the date, but the 18th, 19th, 17th. I don't know.

Q. All right. And then you worked a few more weeks? How long was it exactly, do you remember, when Louise came into the car?

A. About six weeks, I think about six, seven weeks.

Q. Do you remember when the election was?

A. March 10th, I guess.

Q. Did you vote in that election?

A. Yes, sir. [26]

Q. I want to go back to the time when you were in the car with Louise. A. Yes.

Q. When she asked you whether you had done anything about the Union, whether you had signed,

(Testimony of Moses Machoian.)

did Louise leave the car after she asked you these questions?

A. No. She says, "If you fellows vote for the Union, well, you know what is going to happen. We don't want Unions in this."

Q. Was there anything more she said in the car?

A. Anything more?

Q. Yes. A. Well she told us, everybody.

Q. Then, when she was finished, did she leave?

A. She says she is going over to the Union and find out.

Trial Examiner Downing: How long before the election was it that she was in the car?

The Witness: About ten or fifteen days, I think.

Q. (By Mr. Siciliano): And you say the election was March 10th? A. Yes.

Q. And she came into the car about ten or fifteen days before March 10th?

A. Yes, about ten days before, ten or fifteen days. I don't remember.

Q. Did you ever see Louise again before the election? [27]

A. Yes. After three days, after the thing happened, she came.

Q. After three days after what? After three days after this first time in the box car?

A. Yes.

Q. And then what?

A. And then she came over and she said, "Mose"—

(Testimony of Moses Machoian.)

Mr. Thomas: Wait a minute. Where did she come? Who was present?

Mr. Siciliano: I will bring that out.

Q. Who was in the car?

A. I was in the car, Bob was in the car, Eddie was in the car.

Q. Give their last names.

A. Eddie Ejadian, Bob Krikorian, Harry Ek-zoozian, and me, Moses Machoian.

Q. She came back to the car again three days later?

A. Three days later.

Q. What happened then?

A. She came over there and she said, "Listen, Mose, you are the guy that makes these people union. You organized the Union here, because Mr. Sohigian was"—

Q. Who is Mr. Sohigian?

A. I was working for him about a year ago.

Mr. Thomas: If your Honor please, let him complete the [28] conversation.

Q. (By Mr. Siciliano): Go ahead.

A. "We asked Mr. Sohigian, and Mr. Sohigian said you do the same thing over his place, you organized the Union over there, and you give all the people's name, and you are the one who organized here. We are sure you are the one."

Trial Examiner Downing: Did you admit it?

Q. (By Mr. Siciliano): What did you say then?

A. I said, "Yes, I do over there, but I know nothing about it over here," I said.

Q. What else was said?                      A. She left.

(Testimony of Moses Machoian.)

Q. She left the car? A. Yes.

Trial Examiner Downing: How long was that after the first time she was in the car?

The Witness: That was the second time she come over.

Trial Examiner Downing: I say, how long after the first time was that?

The Witness: About three days after.

Trial Examiner Downing: All right. Proceed.

Q. (By Mr. Siciliano): She then left the car?

A. Yes.

Q. Did you do anything further?

A. Well, we had a regular argument. [29]

Q. Who is "we"? Who had an argument?

A. I had the argument.

Q. With whom?

A. With Harry Ekzoozian. I said, "You are the one that screwed me, because"—

Mr. Thomas: Your Honor, would counsel please clarify when this argument occurred?

Mr. Siciliano: This happened right after Louise left the car, that same day, three days later.

Mr. Thomas: Would you have the witness testify to that?

Mr. Siciliano: He has already testified.

Mr. Thomas: It wasn't clear to me.

Trial Examiner Downing: It wasn't clear to me, either.

Mr. Siciliano: We could have the record read, but I will ask you.

Q. You had this argument with Harry when?



(Testimony of Moses Machoian.)

A. Harry Ekzoozian.

Q. When? A. The same time.

Q. Same time as when?

A. When Louise left.

Q. What visit? A. The second visit.

Q. When Louise left the second visit, what happened?

A. I told Harry, "You are the one. You are the one that [30] knows I had been kicked out for Unions at Sohigian, and you squealed on me. You told the Mosesians I worked over there and I had the same case, I was kicked out for unions, and they went over there and find out at Mr. Sohigian's."

Q. And then what?

A. Then he said, "You can't call me a squealer. I am going right over to the office and tell them they are going to lay you off. The Union can't work any more over here."

Q. I am going right over to the office?

A. Yes.

Q. Then what?

A. Then he went over to the office and talked to Louise.

Q. He ran over to the office? A. Yes.

Mr. Thomas: Wait a minute. How does he know he ran?

Mr. Siciliano: Well, that is a conclusion. You can strike that.

Mr. Thomas: Strike that out. He doesn't know.

Trial Examiner Downing: Did you see where he went?

(Testimony of Moses Machoian.)

The Witness: Yes. He said he was going over to the office.

Trial Examiner Downing: But did you see where he went?

The Witness: He went over to the office.

Trial Examiner Downing: Did you see him go over there?

The Witness: Yes, and Bob saw him, too. [31]

Q. (By Mr. Siciliano): Did you see him go over to the office?

A. Yes, I saw him go over to the office.

Trial Examiner Downing: Don't tell us what somebody else saw. You tell us just what you know.

Q. (By Mr. Siciliano): Now, you had the election? A. Yes.

Q. Did you see the Mosesians, or talk with them after the election?

A. No. They never talked to me after the election at all, no.

Q. Nothing was said after the election?

A. No.

Q. Can you tell us how it came about that you were laid off? A. There was a pay day.

Q. What day was that? A. The 12th.

Q. That was a pay day? A. Tuesday, yes.

Q. Tuesday, April 12th, was pay day. Go ahead.

A. We all go over to the office pay day and get our pay.

Q. What time of the day was that?

(Testimony of Moses Machoian.)

A. Five o'clock.

Trial Examiner Downing: What day of the week?

The Witness: April 12th.

Trial Examiner Downing: What day of the week? [32]

The Witness: Tuesday.

Trial Examiner Downing: I just wanted to find out what pay day is around here.

Q. (By Mr. Siciliano): Tuesday, April 12th?

A. Yes.

Q. Is that the day—when do they pay you?

A. Every Wednesday.

Q. Every Wednesday?

A. I mean Tuesday.

Q. Every Tuesday?

A. Every Tuesday they pay.

Q. Now they pay you at five o'clock?

A. Yes.

Q. Is that when you get off work?

A. That is when we get off work.

Q. How are you paid?

A. They give me a check.

Q. Every week? Once a week?

A. Every week.

Q. Now, this day, Tuesday, April 12th, when you went there, will you tell us what happened, when you went to get your check?

A. I went over to the office and got my check and walked out on the platform. That platform is right near the office.

(Testimony of Moses Machoian.)

Mr. Thomas: Would counsel please clarify? Did he go to [33] the office and then walk out, or did he go to the platform?

Q. (By Mr. Ciciliano): You went to the office first?

A. I went to the office first.

Q. Got your check?

A. Got my check and then went out the door on the platform.

Trial Examiner Downing: Who gave you the check?

The Witness: Louise.

Q. (By Mr. Siciliano): Louise gave you the check? A. Yes.

Q. You walked out of the door on to the platform? Were you leaving work? Were you going home for the day?

A. Yes, after five o'clock. We work until five o'clock.

Q. Then what?

A. And the old woman was over there, when I got my check.

Q. Who is the old woman?

A. Tourvanda Mosesian.

Q. And what happened?

A. She came right back at me out of the door, out on the platform.

Q. She came out to where you were on the platform? A. Yes.

Q. And then what?

(Testimony of Moses Machoian.)

A. She says, "Wait a minute, Mose."

Q. "Wait a minute, Mose"?

A. Yes. [34]

Trial Examiner Downing: Don't repeat the answer, if his answers are clear. If it is a question of whether the reporter has got the answer, then it would be in order to repeat it.

Q. (By Mr. Siciliano): Go ahead.

A. She told me, "You are going to get laid off," and I asked her, "What is the matter? No work?" She said, "That is my business, and when we need you, we will call you back by telephone."

Q. Did she ever call you back? A. No.

Q. Did you ever go back? A. No.

Q. You had worked then two days that week?

A. Yes.

Q. Monday and Tuesday?

A. Yes, the last week.

Q. How did you get your check?

A. I got my check by mail.

Q. When? A. Monday, the next Monday.

Q. The next Monday?

A. The next Monday.

Q. She gave you no reasons for firing you?

A. No. She never told me a word. That is all she told me. [35]

Q. Mr. Machoian, did you ever smoke in the warehouse?

A. Well, we smoke on the——

Q. Wait a minute. Who is "we"?

A. All the people.



(Testimony of Moses Machoian.)

Mr. Thomas: Answer the question.

Q. (By Mr. Siciliano): Tell me their names. Who are they?

A. Eddie Ejadian.

Mr. Thomas: You asked a specific question, Counsel. Have the witness answer the question.

Trial Examiner Downing: You were asked if you smoked. That was the question.

The Witness: I smoked lots of times on the platform. Everybody smoked.

Mr. Thomas: Answer the question yes or no.

Q. (By Mr. Siciliano): Did you smoke?

A. Yes, sometimes.

Q. Where? A. On the platform.

Q. Did you ever smoke inside the warehouse?

A. Sometimes we smoked inside.

Trial Examiner Downing: The question is, did you smoke inside?

The Witness: Sometimes.

Q. (By Mr. Siciliano): O.K. I am talking about you, alone, nobody else, just you. [36]

A. Yes, sometimes I smoked inside.

Q. All right. Now, did you ever get any complaints, did anybody ever tell you, about your smoking?

A. Not a one of them. They didn't say any complaint. They didn't tell me nothing at all.

Trial Examiner Downing: Did you ever know about any rule against smoking?

The Witness: There is no rule at all. They didn't tell me.

(Testimony of Moses Machoian.)

Q. (By Mr. Siciliano): When you started to work, did they tell you anything?

A. No, they didn't tell me anything.

Mr. Thomas: Your Honor, who is "they"? Where did it occur? What happened?

Q. (By Mr. Siciliano): When you started to work, did the Mosesians or did Mr. Justice, either of those people, tell you about smoking?

A. No.

Trial Examiner Downing: Who hired you?

The Witness: The old woman hired me.

Q. (By Mr. Siciliano): Mrs.—

A. Mrs. Tourvanda.

Q. Did you ever see anyone else smoke?

A. The people all working over there.

Q. Tell me who? [37]

A. Eddie Ejadian, Bob Krikorian, Harry Ek-zoozian, and Eccles smoked sometimes.

Q. Eccles? A. Yes.

Trial Examiner Downing: Did Mr. Justice ever smoke?

The Witness: Yes.

Trial Examiner Downing: Where?

The Witness: In the warehouse.

Trial Examiner Downing: Did he ever smoke on the platform?

The Witness: He come over to the platform. He smoked on the platform. He smoked inside. He smoked everywhere.

\* \* \*

Q. (By Mr. Siciliano): Did you ever see any "No Smoking" signs around?

(Testimony of Moses Machoian.)

A. No, never.

Q. You never saw any? A. No.

Q. Were any signs ever pointed out to you?

A. No.

Q. Did anybody ever point out some signs?

A. No. [38]

Q. Mr. Machoian, did you ever sing in the warehouse? A. Sometimes.

Trial Examiner Downing: What?

Mr. Siciliano: Sing.

Q. Did you ever sing? A. Sometimes.

Q. How loud? A. Well, not loud, anyway.

Trial Examiner Downing: The Answer doesn't say he was fired for singing, Mr. Siciliano.

Mr. Siciliano: All right, I am dropping that.

Q. Mr. Machoian, do you want your old job back? A. Not just now, no.

Q. Not just now?

A. No, because I bought a ranch three weeks ago and I can't go back over there any more, no.

Q. When did you decide that you don't want to go back?

A. Before three weeks, any time they give me a job, I go back.

Q. When you bought the ranch three weeks ago, that is when you decided? A. I can't go now.

Q. You can't go now? A. No. [39]

(Testimony of Moses Machoian.)

Cross-Examination

By Mr. Thomas:

Q. Where did you work before coming to the State Center Warehouse?

A. Before the warehouse?

Q. Yes. A. I worked Libby's.

Trial Examiner Downing: Where?

The Witness: Libby, McNeill & Libby in Selma.

Q. (By Mr. Thomas): Did you leave your employment there or were you discharged?

A. How is that?

Q. Did you leave your employment there or were you fired? A. No.

Mr. Siciliano: I object, your Honor; that is immaterial.

The Witness: I——

Trial Examiner Downing: Just a minute. Don't answer until I rule on the objection.

Mr. Thomas: In order to understand the charges that are made here, we have to place the witness in his employment, what he does, and the character of the employee. They have introduced evidence with regard to his employment at Mr. [41] Sohigian's place, and what occurred there. This Libby, McNeill & Libby employment came between his employment and the one at Mr. Sohigian's.

Trial Examiner Downing: Suppose it did?

Mr. Thomas: Then, if your Honor please, it is building up the character of your witness here, in order to present the witness that we have before us.

(Testimony of Moses Machoian.)

Trial Examiner Downing: Suppose he has been fired from Libby, McNeill & Libby?

Mr. Thomas: Suppose he has been fired from every place he has been?

Trial Examiner Downing: Well, suppose he has? The issue is that he was fired for smoking.

Mr. Thomas: And for union activities.

Trial Examiner Downing: The Complaint says it was for—the Answer says that he was fired for smoking.

Mr. Bamford: We are going to strenuously resist any attempt upon the part of the Respondent to enlarge his Answer with respect to the reasons for discharge.

Mr. Thomas: If your Honor please, on cross-examination they opened—I mean on direct examination, they opened the whole deal as to Mr. Machoian's singing.

Trial Examiner Downing: They asked if he sang, but——

Mr. Thomas: And they asked if he sang loudly.

Trial Examiner Downing: Up to this time the Respondent [42] has not pleaded that he was discharged for singing. It pleaded only that despite frequent warnings to desist, he was discharged for smoking while at work. That is what the Respondent has pleaded. I assume that is what it expects to prove.

Mr. Thomas: That is your immediate cause for discharge, your Honor.

Trial Examiner Downing: Now, if you expect



(Testimony of Moses Machoian.)

to prove that he was discharged from Libby, McNeill & Libby for smoking at work, that might possibly have some remote relevance.

Mr. Thomas: We are not going to prove that, your Honor, but what we have averred in our Answer is the immediate cause for his discharge.

Trial Examiner Downing: You have pleaded only one cause.

Mr. Thomas: That is right, and that is the immediate cause.

Trial Examiner Downing: All right.

Mr. Thomas: That doesn't mean that there isn't a cumulative effect here. You have to place your employee in the category in which he exists.

Trial Examiner Downing: As a smoker?

Mr. Thomas: Not only as a smoker, but as a smoker and as an employee of the State Center Warehouse.

Trial Examiner Downing: I understand that, but how does the [43] fact that he worked elsewhere and may have been discharged have any bearing on the issue here?

Mr. Snell: If your Honor please, the proof of these cases usually follows the pattern of proving that the employee was an inefficient employee.

Trial Examiner Downing: Inefficient?

Mr. Snell: That he was not an efficient employee, and that there was——

Trial Examiner Downing: You haven't alleged that he was inefficient. You have alleged that despite frequent warnings, he smoked while at work

(Testimony of Moses Machoian.)

and that you discharged him for that.

Mr. Thomas: That was the immediate cause for discharge, your Honor. If your Honor please, if there is any question, I would like to move at this time for leave to amend the Answer, to show that Mr. Machoian was also obnoxious in regard to his conduct in the plant.

Mr. Bamford: Mr. Examiner, in the first place it seems to me that it ill behooves the respondent to change his defense at this time. In the second place, if he moves to amend the Complaint, I shall strenuously resist that motion. [44]

Trial Examiner Downing: You mean the Answer.

Mr. Bamford: The Answer. The case is a year old and he has had plenty of time to do it. In the third place, if the Examiner grants the motion to amend the Answer, I would like at that time to have leave to have additional time in which to prepare rebuttal evidence. We have no evidence to show whether he sang or was discharged for singing, at this time.

Mr. Thomas: Your Honor, his singing is in all the affidavits that the Government took, and they brought it out at the time that——

Trial Examiner Downing: Of course, the affidavits that the Government took are not evidence before me in this case. This case will be heard on the testimony that is produced here, not on affidavits that the Government may have in its official file, its investigatory file.

Mr. Thomas: That is correct, Your Honor, but

(Testimony of Moses Machoian.)

the position that we are taking here is that Mr. Machoian's conduct throughout the plant certainly they should be aware of it, in view of the fact that they have it in their affidavits, and we are not springing any surprise on them.

Trial Examiner Downing: Are you prepared to state orally the amendment that you desire to offer?

Mr. Thomas: We will be very shortly, Your Honor. I would like to work it out in final form.

Trial Examiner Downing: You are not prepared to state it [45] orally at this time?

\* \* \*

Trial Examiner Downing: Of course, it is up to you to plead what you want, but general inefficiency covers the waterfront, doesn't it?

Mr. Snell: Yes. it does, but in the case of any employee it is largely a matter of underlying causes and an ultimate cause, immediate cause.

\* \* \*

Trial Examiner Downing: I suggest that for the present [47] you limit your examination to the issues in the Answer.

Mr. Thomas: Yes, Your Honor.

Trial Examiner Downing: As it stands at the present.

Q. (By Mr. Thomas): I am going to refresh your recollection. Where did you work before you came to work at the State Center Warehouse?

A. Libby, McNeill, Libby in Selma.

Q. When did you leave there?

A. About some time in August. I got hurt and

(Testimony of Moses Machoian.)

I went to the hospital, and then the season is finished and I got through with it.

Q. Why did you go to the hospital?

A. I had cut my finger.

A. At Libby's?

A. Libby, McNeill, Libby's, yes, sir.

Q. How long were you in the hospital?

A. I have been about 8 days in the hospital and——

Mr. Siciliano: Mr. Examiner, I object to this testimony as being immaterial at the present time. In the first place, we don't have the time when this man worked. August of what year?

Trial Examiner Downing: How is it material, Mr. Thomas?

Mr. Thomas: If Your Honor please, it would certainly seem to me, as I was discussing here a moment ago, that the type of employee that the man is is relevant. If you want to [48] skip all this and go directly to his employment at State Center, I will be glad to do so, but he came to the State Center Warehouse with an impairment. I think Your Honor should know that.

Mr. Bamford: Well, do you want to include that in your answer?

Trial Examiner Downing: How is that material? In view of the amendment that has been suggested here orally, I don't see how that is material.

Mr. Thomas: It will come out. We will develop later on, Your Honor, that there were certain complaints made against Mr. Machoian by other employees and that that finger had a very definite

(Testimony of Moses Machoian.)

point in the complaints that were made.

Trial Examiner Downing: Proceed with the examination. I will overrule the present objection.

Q. (By Mr. Thomas): Where did you work before that, Mr. Machoian? A. Where?

Q. Where did you work before you worked at Libby's?

A. Magarian's, Industrial Scientific Company.

Q. Who was your employer?

A. Magarian.

Q. Who was your immediate employer there?

A. What was that?

Q. Who was your immediate employer at Magarian's? Wasn't it [49] Mr. Sohigian?

A. Sohigian was the boss.

Q. You were discharged from Sohigian's place?

A. Yes, sir.

Q. Why were you discharged?

A. I got kicked out for the Unions, too.

Q. You were fired? A. Yes.

Q. You were fired because of union activities from Sohigian's?

A. Well, he didn't so so, but he come over and tell me——

Q. Wait a minute. Answer the question. Go ahead.

A. He came over and tell me, "Mose, we hear you are not satisfied with the pay. I think you get fired. You work until Friday and you can't work here no more."

Q. You are certain that that is what happened?

A. Well, I left the job.



(Testimony of Moses Machoian.)

Q. Isn't it true, Mr. Machoian, that you were fired because you were inefficient in your work, that you——

Mr. Bamford: Just a moment. I am going to object to any further line of questioning on this. Perhaps we have been overruled on this objection before, but the only reason we went into his former employment was because of a certain conversation had with Louise. It was merely background.

Trial Examiner Downing: The objection is [50] overruled. Proceed.

Q. (By Mr. Thomas): Isn't it true, Mr. Machoian, that you were fired by Mr. Sohigian because you were inefficient in your work, because you destroyed the material over there and broke the dies at the place?

A. No. He didn't tell me nothing. I asked him, "Aren't you satisfied that I work here?" And he said, "You are a good fellow, but you are not satisfied with the pay. We are going to kick you out." That is what Sohigian told me to my face.

\* \* \*

Q. Is there anything in the warehouse that could catch fire?

A. I didn't see any fire over there.

Trial Examiner Downing: The question is, was there anything there that could catch fire.

The Witness: Yes.

Mr. Bamford: We will stipulate that it is a public warehouse and there are many things that would catch on fire.

(Testimony of Moses Machoian.)

The Witness: Naturally, if you throw matches, it would start a fire. [52]

Q. Together, yes. Who employed you when you first came to work at State Center?

A. Who hired me, you said?

Q. Yes. A. Mrs. Tourvanda Mosesian.

Q. When did you apply for the job?

A. I didn't get you.

Q. When did you first ask Mrs. Mosesian for the job?

A. A couple of days before I started.

Q. How did you happen to ask her?

A. Well, I asked her for a job, because the can-  
nery was going to work a couple of weeks and I fin-  
ish, and I try to [53] get the job, and she said,  
"All right."

Q. Was there anyone else present at the time  
when you went to ask her for the job?

A. Harry asked her for the job, too.

Q. Harry who? A. Harry, too.

Q. Harry who? A. Harry Ekzoozian.

Q. He went with you at the time? A. No.

Q. At the time you asked for the job?

A. Not at that time, no.

Q. You went alone?

A. No. You asked me who else asked for a job.  
Harry asked the old woman for a job for me, and  
then we went together and see the old woman, and  
she said, "All right, come over and start Monday."

Q. You and Harry went to see Mrs. Mosesian for  
the job? A. Yes.

(Testimony of Moses Machoian.)

Q. Harry was present? A. Yes.

Q. Was anyone else present?

A. My wife was present and his wife was present.

Q. Was anybody else present?

A. Louise was present over there. [54]

Q. Was anybody else present?

A. I don't see anybody else.

Trial Examiner Downing: Where were you? In the office, when you asked for the job?

The Witness: No. We go over to the house.

Trial Examiner Downing: The house?

Q. (By Mr. Thomas): Where is Mr. Mosesian's house?

A. On "R" Street, but I don't know the number.

\* \* \*

Q. (By Mr. Thomas): What was said at the time when you were employed? Did anybody talk to you about your employment? Who employed you? The old lady employed you? A. What?

Q. Mrs. Mosesian hired you? A. Yes.

Q. Did she say anything to you at the time that you were employed? A. No. At the time?

Q. About smoking?

Mr. Siciliano: We object to that. He is supposed to [55] follow the line of the direct examination on cross, and I am wondering what he is attempting to bring out here. We asked no questions in regard to his hiring.

Trial Examiner Downing: I will overrule the objection.

Mr. Thomas: What I am trying to do, Your Honor, is to get him put in the time and place and

(Testimony of Moses Machoian.)

location where he was employed and the conditions of his employment.

Trial Examiner Downing: All right, proceed.

Q. (By Mr. Thomas): Now, when Mrs. Mosesian hired you—— A. Yes.

Q. ——did she say anything about smoking in the warehouse? A. No.

Q. She didn't mention smoking in the warehouse?

A. She didn't mention nothing about me smoking at all.

Q. Nobody said anything about the smoking?

A. Nobody, since I worked over there. Nobody told me about the smoking at all.

Q. I am asking you about Mrs. Mosesian.

A. No.

Q. There was nothing said about smoking at that time? A. No, sir.

Q. Isn't it true that Mrs. Mosesian told you at that time that you could have the job but to remember that there would be no smoking in the warehouse, as the goods did not belong to them? [56]

A. No, sir.

Q. And if you wanted to smoke, you were to go outside on the platform?

A. She didn't tell me anything about the smoking at all, when she hired me, and she didn't tell me all the time I worked over there anything about the smoking, not one time.

\* \* \*

Q. (By Mr. Thomas): Are there any "No

(Testimony of Moses Machoian.)

Smoking" signs in the warehouse?

A. No, sir. I don't see any signs at all.

Q. How long did you work there? You worked in the warehouse proper during all the time that you worked there at the Mosesian's?

A. About five or six months.

Q. Yes, and you worked in every part of the warehouse? A. Yes, sir.

Q. And you saw no "No Smoking" signs in that warehouse?

A. No, I didn't see any sign at all.

Q. Mr. Machoian, isn't it true that there are "No Smoking" signs stenciled on every pillar in that warehouse?

A. No, I don't see any sign at all.

Q. Isn't it true, Mr. Machoian, that there is a "No Smoking" [57] sign put right over the door as you go down into the basement?

A. No, I don't see any sign at all, no. At the time I worked over there I saw no sign at all, no.

\* \* \*

Q. Did anyone warn you that you should not smoke in the [58] warehouse, after you had been hired?

A. No one told me anything since I worked out there.

Q. Nobody talked to you about smoking?

A. Not about the smoking at all.

Q. Isn't it true, Mr. Machoian, that you were warned many times during the period of your employment from November 18, 1948, to April 12, 1949, in the presence of Harry Ekzoozian by Mrs.



(Testimony of Moses Machoian.)

Mosesian to stop smoking in the warehouse and go outside, if you wanted to smoke?

A. Mrs. Tourvanda told me, you said?

Q. Yes.           A. No.

Q. Isn't it true that you were warned many times during the period of your employment from November 18, 1948, to April 12, 1949, in the presence of Harry Ekzoozian by Louise Mosesian to stop smoking in the warehouse and to go outside?

A. They never told me, no.

Trial Examiner Downing: Mr. Thomas, in view of his categorical denials, is it necessary to continue that?

Mr. Thomas: Your Honor, what I wish to do is to have Mr. Machoian deny with regard to each one of these witnesses. I will produce the witnesses to show that each one of them warned him constantly not to smoke in the warehouse.

Trial Examiner Downing: Proceed.

Q. (By Mr. Thomas): Isn't it true that you were warned several [59] times during this period of your employment from November 18, 1948, to April 12, 1949, in the presence of Harry Ekzoozian by Mary Mosesian to stop smoking in the warehouse?           A. No, sir.

Q. And to go outside, if you would want to smoke, where you would have to go?

A. No. I never heard anything from them at all.

Q. Isn't it true that you were told by Harry Ekzoozian, that you should not smoke in the warehouse or you would be fired?

(Testimony of Moses Machoian.)

A. That Harry told me, you said?

Q. Yes. A. No, no, sir.

Q. During the same period? A. No.

Q. During the same period of your employment?

A. No.

Trial Examiner Downing: Before you got a job there, did Harry ever tell you that there was any rule against smoking in the warehouse?

The Witness: No, sir; never.

Q. (By Mr. Thomas): Well, Mr. Machoian, you were fired on Tuesday, April 12, 1949. Who did you work with on that day? A. That day?

Q. Yes. [60]

A. I don't remember. We worked all together. I don't remember anyway.

Q. You don't remember what you were doing?

A. What?

Q. You don't remember what you were doing?

A. No.

Q. On that day?

A. No. That was a long time. I don't remember what we were doing that day.

Q. You don't recall that you were working with Harry Ekzoozian on that day?

A. Maybe I was working with Harry or some of those other people, but I don't remember.

Q. Were you warned on that day by anyone that you should not smoke in the warehouse?

A. No, sir.

Q. You had no conversations with anyone?

A. No. I didn't hear any time from anybody,

(Testimony of Moses Machoian.)

“Don’t smoke in the warehouse or outside,” or all that. I never hear.

Q. Isn’t it true, Mr. Machoian, that Mrs. Mosesian caught you smoking in the warehouse in the morning on that day and in the presence of Harry Ekzoozian warned you again that you must not smoke in the warehouse or you would have to go?

A. No, sir.

Q. Isn’t it true that Mrs. Mosesian caught you smoking again [61] in the afternoon of that day in the warehouse, while you were working with Harry Ekzoozian?

A. No, sir.

Q. Did anyone from the office catch you in the afternoon of that day, before you went for your check?

A. No.

Q. You talked to no one?

A. No.

Q. Mrs. Mosesian did not send anyone to talk to you?

A. No.

Q. Mrs. Mosesian didn’t send anyone to tell you that she wanted to see you?

A. No.

Q. Mr. Machoian, isn’t it true that Violet Misi-kian came to you in the warehouse around 4:00 o’clock in the afternoon of April 12, 1949, and told you that Mrs. Mosesian wanted to see you after work, when you picked up your check?

A. No.

Q. Then, I take it that you didn’t go to see Mrs. Mosesian that afternoon?

A. No. They didn’t call me to the office and nobody told me a word about it, no.

Q. Did Mrs. Mosesian talk to you that afternoon?

(Testimony of Moses Machoian.)

A. No.

Q. Well, Mr. Machoian, you testified that she talked to you [62] at 5:00 o'clock on that afternoon.

A. Well, you just tell me when I go home after 5:00 o'clock, I go over there and I take my check, and she talk to me after.

Q. She did talk to you in the afternoon then?

A. After 5:00 o'clock.

Mr. Bamford: I think he misunderstood your question.

The Witness: Not in the office.

Q. (By Mr. Thomas): No. Where did she talk to you?

A. She talk to me outside on the platform, when I was going home. She said, "Mose, wait a minute." I said, "What is it?" She says, "You are going to laid off." I said, "Why? No work?" She says, "That is my business."

Q. Then she didn't tell you why you were fired?

A. No. She didn't tell me.

Q. There was no discussion with her of any nature whatsoever why you were fired?

A. No.

Q. Isn't it true that Mrs. Mosesian actually told you on the ramp in front of the warehouse on April 12, 1949, at or about the hour of 5:00 o'clock, that you were fired because of your smoking in the warehouse?

A. No, sir. She never talked a word about smoking at all.

Q. Mr. Machoian, did you have any idea as to

(Testimony of Moses Machoian.)

why you were fired?           A. What was that? [63]

Q. Did you have any idea of why you were fired?

A. Why I was fired?

Q. Why you were fired?

Trial Examiner Downing: Did you have any idea why you were fired?

The Witness: I don't know, no.

Q. (By Mr. Thomas): You didn't have any belief as to why you were fired?

A. No.

Q. It came as a complete surprise to you?

A. No, I didn't hear nothing about I am going to get fired.

Trial Examiner Downing: Why did you think that you were being fired?

The Witness: I don't know. I never know I got fired that night.

Q. (By Mr. Thomas): You never had any belief as to why you were being fired?

Trial Examiner Downing: When you were fired, why did you think you were being fired?

The Witness: Well, I think they fire me because I work for the Unions.

Q. (By Mr. Thomas): She didn't tell you that?

A. No, she didn't tell me that. She didn't tell me that.

Q. That is the only belief, why you thought that you were fired? [64]

A. That is all I believed.

Q. Mrs. Mosesian didn't say anything as to that?

A. No. She just said, "Mose, you are going to



(Testimony of Moses Machoian.)

get laid off," and I said, "Why, no work?" And she says, "That is my business," and I said, "All right," and I go home. That was after 5:00 o'clock. I didn't know when I was going to get fired.

Q. Who drove home from work with you?

A. My daughter.

Q. Who? A. My daughter, my girl.

Q. Did anyone else?

A. Harry went with me every night.

Q. Harry drove home with you on that night?

A. Yes, sir.

Q. Isn't it true——

A. We always took him. [65]

\* \* \*

Q. (By Mr. Thomas): Mr. Machoian, you have testified that Louise Mosesian talked to you twice in a boxcar? [66] A. Yes, sir.

Q. Shortly before the Union election?

A. Yes, sir.

Q. On the first occasion, you stated that Louise said she was going over to the Union to find out if you had joined the Union? A. Yes, sir.

Q. Was that a threat?

A. Well, I heard it. She said it.

Q. Pardon me?

A. She said she was going over to the Union and find out. Whether she go or not, I don't know.

Q. What did you consider her statement to mean?

Mr. Bamford: Objection.

(Testimony of Moses Machoian.)

Trial Examiner Downing: Sustained. The Board has passed on that point many times, Mr. Thomas. It isn't a question of whether the employee considers the inquiry coercion or not. It is what the reasonable effect might be, whether it would be reasonably calculated to have a coercive effect. The Board has found both before and after the Taft-Hartley Act, that the mere fact of inquiry into membership, Union membership, is coercive.

Q. (By Mr. Thomas): This inquiry was, according to you, directed to all the employees present? Look at me, Mr. Machoian, not at the Government Attorneys. [67]

Mr. Bamford: Let the record show that he wasn't looking at the Government Attorneys. He was looking over there.

Trial Examiner Downing: I don't know where he was looking.

Mr. Bamford: Well, I was looking at him. He wasn't looking at me.

The Witness: I don't get you. What do you mean?

Q. (By Mr. Thomas): I said, who was present at the time? Did Louise talk to you, when she——

A. Yes. Louise, when she come over, Bob Krikorian was over there, Harry Ekzoozian, Eddie Ejadian, and Bill Eccles.

Q. Did she talk to all of you together?

A. All of us together.

Q. She never talked to you or directed her inquiry to you alone?

(Testimony of Moses Machoian.)

A. Not the first time. She talked to us all together.

Q. When Louise talked to you again three days later, in the boxcar, was this the only time that any of the Mosesians talked to you about the Union or Union activities? A. That is all.

Q. Do you recall what time of the day it was when Louise talked to you?

A. It was about the last of February or the first of March, I think. I don't remember.

Q. No, Mr. Machoian, you misunderstood me. Do you recall [68] what time of day?

A. What time was it?

Q. What time of day?

A. It was about 10:00 o'clock.

Q. It was in the morning?

A. It was in the morning about 10:00 or half past 10:00.

Q. When she came out into the boxcar?

A. Yes.

Trial Examiner Downing: That was the first time?

The Witness: That was the first time, yes.

Q. (By Mr. Thomas): What time was it the second time she talked to you, at the time she mentioned Sohigian?

A. Well, let's see. It was in the afternoon, I guess. I don't remember.

Q. Perhaps I could refresh your recollection. Was it right after lunch?

A. I don't know. I don't remember if it was in the afternoon. I don't remember. It was a long

(Testimony of Moses Machoian.)

time ago. I don't remember what was the time she came over.

Q. It was during working hours, though?

A. Yes, during the working hours. It was in the boxcar.

Q. How did Louise happen to come up and talk to you?

A. She come over there. "Listen," she says, "Mose. Now, I believe you"——

Q. Listen, Mr. Machoian, you misunderstood my question. [69] Was there any occasion for her to come up to talk to you then?

A. Well, she came over there and tell me that.

Q. No. Were you then doing anything at the time to attract her attention?

A. She came over to see me, I guess, and she started talking to me.

Q. Listen to the question. Were you, Bob Krikorian, Harry Ekzoozian, and Bill doing anything to attract her attention?

A. Yes. We were unloading the flour.

Q. From the boxcars?

A. Yes, from the boxcar.

Q. Were you actually working at that time?

A. Yes.

Q. You were performing the duties that you were hired to do?

A. I didn't get you.

Trial Examiner Downing: Why don't you say, "Were you working"?

The Witness: Yes, we were working over there, when she came in.

(Testimony of Moses Machoian.)

Trial Examiner Downing: Phrase your questions as simply as possible, Mr. Thomas.

Mr. Thomas: I am awfully sorry, Your Honor.

Q. Were you talking while you were working?

A. Sure. [70]

Q. Were you arguing while you were working?

Trial Examiner Downing: What time are you talking about?

Mr. Thomas: On this occasion.

Trial Examiner Downing: He is speaking generally, I am afraid.

Mr. Thomas: We are talking about this specific occasion when Louise came to the boxcar, Your Honor. I am trying to make it as simple as I can.

The Witness: When she came to the car, we was working.

Trial Examiner Downing: Were you talking?

The Witness: No. We were always working, loading the truck and take them in.

Q. (By Mr. Thomas): You were not arguing in a loud voice or talking in a loud voice or singing?

A. No. When she came in, we have no argument, nothing at all, no.

Q. Mr. Machoian, isn't it true that on the occasion that Louise Mesosian talked to you at or near the boxcar somewhere around the first of March, 1949, you were having an argument with Harry Ekzoozian about whether Mike Sohigian was in town and that you said at the top of your voice that he and all the Mosesians were liars when they said



(Testimony of Moses Machoian.)

that Sohigian was in town and was at the Mosesians the evening before?

A. No, I didn't call them a liar and I didn't say Sohigian was not in town. I didn't tell anything. [71]

Q. Isn't it true, Mr. Machoian, that Louise Mosesian came up to the boxcar to see what you and Harry and all the people were yelling about, and she so stated when she arrived at that boxcar?

A. No, she came over and started talking.

Q. Didn't Louise Mosesian, when she came up to you at the boxcar, ask you, "What the heck is going on here? Why aren't you working?"

A. No.

Q. And that you were to get back to work?

A. No.

Q. And isn't it true that she never mentioned, she, Louise Mosesian, did not mention at this time or any other time, mention to you, Mike Sohigian, Mr. Sohigian's name, and never mentioned your Union activities?

A. Yes, she told me—

Q. Answer the question.

Trial Examiner Downing: He is answering it. Go ahead and answer it.

A. (Continuing): When she came over to the car, she said, "Listen, Mose, we know you are the one that organized the Union over here, because Mike Sohigian, we find out from Mike Sohigian you did the same thing over at his place and they kicked you out over there and we are sure you are the one that made the fellows sign the Union papers." [72]

(Testimony of Moses Machoian.)

Q. (By Mr. Thomas): Mr. Machoian, isn't it true that Harry Ekzoozian and yourself alone were the ones that talked about Mike Sohigian or mentioned his name, and that Louise Mosesian never mentioned Mike Sohigian's name?

A. She did.

Q. (By Mr. Snell): Mr. Machoian, on the first occasion when Louise Mosesian came into the box-car, will you repeat what she said to you. Will you tell us what, the first time, Louise said in the box-car?

A. Yes, sir.

Trial Examiner Downing: What did she say, the first time?

The Witness: She called every worker, Eddie Ejadian, Bob Krikorian, Eccles and Harry and me, over in the car and she said, "Did you fellows sign any papers for Unions?" And we said, "No." She said, "Did Mr. Justice give you a paper to sign?" We said, "No." "Did anyone come in the warehouse to make you sign papers?" and we said, "No." And she said, "We got the letter from the Union. They are coming in and vote for it, and if you fellows join the Union, you people know what is going to happen."

Q. (By Mr. Snell): And at that time you had signed the application which is——

Trial Examiner Downing: Government's Exhibit 2.

Q. (By Mr. Snell, continuing): ——Government's Exhibit 2, the exhibit which is on the desk, Government's Exhibit 2, [73] is that correct? You

(Testimony of Moses Machoian.)

had signed that paper before Louise came into the boxcar? A. Yes, before.

Trial Examiner Downing: But you denied that you had done it?

The Witness: No.

Trial Examiner Downing: I say, you denied to her that you had signed it?

The Witness: I didn't say to Louise I signed the paper, no.

Trial Examiner Downing: You denied that you had signed any paper for the Union?

The Witness: No.

Mr. Bamford: I am not sure he understand the word "denied."

Mr. Snell: Let's go back on this.

Q. (By Mr. Snell): Did Louise ask you if you had signed any papers?

A. She asked everybody over there.

Q. She asked you, too, as part of the group?

A. She asked me, too.

Q. And you answered?

A. Yes. I said, "No."

Q. You said "No"? A. I said "No."

Q. What papers did you think she was referring to? [74] What papers did you think she meant, when she asked you that?

A. The Union papers, any paper you signed for the Union.

Q. Any paper at all? In other words, when you said "No," you meant you hadn't signed any paper at all for the Union?

A. Yes, but I said "No," because the Union

(Testimony of Moses Machoian.)

said "Tell them no, when anybody comes over and ask you if you signed any paper. You have to tell them no."

Q. You told her no, when you knew that you had, in fact, signed a paper of the Union?

A. Yes, I know.

Q. Then you lied?                      A. That is right. [75]

\* \* \*

Mr. Thomas: If Your Honor please, at this time we would like to move for an amendment of Article 6 of the Answer of the Respondent, State Center Warehouse & Cold Storage Company, so that we would like to add to said Article 6 the following:

Trial Examiner Downing: Do you have the amendment reduced to writing?

Mr. Thomas: Yes, sir.

Trial Examiner Downing: Counsel already has a copy?

Mr. Thomas: Yes, sir.

Trial Examiner Downing: Do you want to read the amendment?

Mr. Thomas: Yes, sir. That the period at the end of Article 6 be changed to a semicolon and the following be added thereto: "That said smoking was the immediate cause of his discharge, in that on said day he was twice caught smoking in violation of said rules and regulations, that there were other and cumulative causes which occurred and reoccurred throughout the entire course of his employment; to wit, singing, dancing, and loud talking on Respondent's warehouse premises during working hours, which disturbed the other employees [76]



(Testimony of Moses Machoian.)

and interfered with the proper performance of their work and the work of Moses Machoian himself.”

Mr. Bamford: General Counsel at this time will take no position on this amendment, save that if the motion to amend the Answer is granted, that at the conclusion of Respondent's case the Examiner will consider a motion for a short continuance, if necessary, to secure rebuttal evidence as to the new issues raised by the Answer.

Trial Examiner Downing: You may have permission to make such a motion at that time.

The amendment will be granted.

Mr. Thomas: Thank you.

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Q. (By Mr. Thomas): Mr. Machoian, you testified that Mr. Justice was your boss and that Louise Mosesian came over and just gave a few orders?

A. Sometimes. [77]

Q. Is that correct? A. Yes.

Q. Is Louise Mosesian your real boss?

A. No, but sometimes she gives the orders, do this and do that.

Q. She was only there occasionally?

A. That happened about once a couple of weeks, once in two weeks. If she need anything, she come over and order do this or do that.

Q. Was Mary Mosesian on the premises at all?

A. No, she never bothered at all. I never see her.

Q. Was Mrs. Twodi Mosesian on the premises?

A. Who?



(Testimony of Moses Machoian.)

Q. Mrs. Twodi P. Mosesian?

Trial Examiner Downing: I think he pronounces her first name differently.

Q. (By Mr. Thomas): The old lady, you call her.

A. Well, she came over there every day, looking how we work and all that.

Q. She never said anything? A. No.

Q. Never talked to you? A. No.

Q. Never talked to any of the other men?

A. No. When we come in the car, she come over and talk to [78] Harry, and when we go in, she comes over and watches how they work. That is all.

Trial Examiner Downing: Did she ever give you any orders at all?

The Witness: No.

Q. (By Mr. Thomas): How does it come about, Mr. Machoian, that according to your testimony, Louise talked to you twice within a period of three days, if she was only over there occasionally?

Mr. Bamford: I submit that that is a matter to be asked of Louise rather than the witness. The witness has testified that she did come and speak to him.

Trial Examiner Downing: I think the witness has explained the occasion for each of her visits; at least, what she did while she was over there. I will sustain the objection.

Q. (By Mr. Thomas): Did you ever make any complaints to Mr. Justice? A. No.

Q. Did you ever talk to Mr. Justice about your job? A. No.

(Testimony of Moses Machoian.)

Q. Did you ever go to him for directions?

A. I didn't get you.

Q. I am sorry. Did you ever go to him for orders, how to do your work? A. No. [79]

Q. You never talked to Mr. Justice about your job at all? A. Mr. Justice?

Q. Yes. A. No, I never talked about it.

Trial Examiner Downing: Who gave your orders?

The Witness: Mr. Justice gave us orders, yes, for doing everything.

Q. (By Mr. Thomas): You just said that Mr. Justice did not give you any orders.

A. Yes. He was the boss. [80]

\* \* \*

Q. Mr. Machoian, what exactly were the Union activities that you did at the warehouse?

A. I don't understand you. What you mean?

Q. When did you decide to join the Union?

A. When? [81]

Q. When? A. It is January.

Q. Of what year? A. Yes.

Q. What year? A. 1948.

Q. Who was with you? A. Who was——

Q. Did you decide to join the Union alone?

A. No. The other fellows wants to join the Union, too.

Q. Who suggested that you join the Union?

A. Who suggested?

Q. Who? A. I don't understand.

Q. Who told you to join the Union?

(Testimony of Moses Machoian.)

A. I think myself, and we talked all together and we tried to get the Union in there.

Q. Did you talk to Bob Krikorian?

A. Yes, I did.

Q. And tell him that he should join the Union?

A. Yes.

Q. You were the one, then, that thought that you should join the Union?

A. Well, we all together think about it, and we go to the Union and sign up. [82]

Q. Did they suggest that you go over and talk to the Union?      A. Eddie?

Q. No. Did Bob suggest?      A. Bob, yes.

Q. Bob suggested that you join?

A. Well, we all together talked, "We have to have the Union over here, because they pay 80 cents an hour. We have to have the Union over here, if they don't have enough wages."

Q. I got lost. You said there is enough what?

A. There isn't enough wages that they pay.

Trial Examiner Downing: Who first started talking about the Union down there?

The Witness: I talked to Bob, and we all talked together, and they all wanted to go Union and sign up.

Trial Examiner Downing: I asked, who started talking about the Union first?

The Witness: I did to Bob.

Trial Examiner Downing: Thank you.

That is what you wanted to know?

Mr. Thomas: Thank you.

(Testimony of Moses Machoian.)

Q. (By Mr. Thomas): After you started talking to Bob, what did you do?

A. He started talking to the other fellows and we come all together and we went over to the Union and signed up.

Q. Bob Krikorian talked with Eddie? [83]

A. Eddie Ejadian and the other.

Q. Did you talk with them?

A. I talked with them, sometimes, too.

Q. Did Bob talk to them most of the time?

A. I don't know. You got to ask that question of Bob.

Q. When did you talk to these men? When did you talk to Bob and Eddie and——

A. I don't know. I don't remember when.

Q. Did you talk to these men during working hours? A. Yes, working hours.

Q. You talked to them while you were working on the job?

A. Yes, working on the job, we talked with each other, yes.

Q. Did you ever talk to Harry? A. No.

Q. You never mentioned the Union to Harry at all?

A. No. When Harry was there, we didn't talk about the Union, because we didn't trust Harry.

Q. So you wouldn't disclose anything to Harry?

A. No.

Trial Examiner Downing: Did he join?

The Witness: No.

(Testimony of Moses Machoian.)

Q. (By Mr. Thomas): What happened to Bob Krikorian?

A. What happened to Bob Krikorian?

Q. Yes.

A. I don't know what happened. [84]

Q. Is he still working at the State Center Warehouse?

A. No. He left that job before the election, before March 10th. He left one week before the election, I guess. He go on another job.

Q. Did you go to any of the Mosesians about the Union or your joining the Union——

A. No, I don't know.

Q. (Continuing): ——after you filed your application with the Union?

A. What do you mean?

Q. Did you ever talk to the Mosesians about your joining the Union? A. No.

Trial Examiner Downing: Did you ever tell them that you had joined?

The Witness: No. I never told them, no.

Q. (By Mr. Thomas): In fact, you told them that you had not joined?

A. I told them, yes, because they told us, "Don't tell them you joined the Union, because you lose your job, if you tell them you joined, before the election."

Q. Did any of the Mosesians talk to you either alone or as a member of a group about the Union?

A. No.

Q. They never mentioned Union to you after this



(Testimony of Moses Machoian.)

one incident [85] when Louise talked to you?

A. After the election?

Q. No, before the election.

A. Before the election, I told you that Louise came over to the car and told me about it.

Mr. Bamford: May I say that the witness testified that there were two occasions when Louise talked to them.

Mr. Thomas: That is correct. What I am trying to get at is that there were no other occasions after the second occasion.

Q. All right, Mr. Machoian, did Mary Mosesian ever talk to you as a group about the Union, as a member of the group?

A. She never talked to me about the Union, about nothing at all. She never talked to me.

Q. How about the day of the election?

A. After the election?

Q. On the day of the election did she talk to you?

A. She come over and tell me, the election day, "They are going to have an election about 2:00 o'clock," something like that. That is the only day.

Trial Examiner Downing: That was Mary?

The Witness: Mary, yes.

Trial Examiner Downing: I thought that you said she was never down there?

The Witness: The day on election she told me.

Trial Examiner Downing: I understood you to testify that [86] Mary was never down there at the

(Testimony of Moses Machoian.)

warehouse. Was that wrong or did I misunderstand you?

The Witness: The last day, on election day, she come up and tell me.

Trial Examiner Downing: Was she there any other time?

The Witness: No.

Q. (By Mr. Thomas): She was never there at the warehouse at any other time? A. No.

Mr. Siciliano: The answer is different from the question. May I ask a question?

Did Mary work at the warehouse, when you were there?

The Witness: Yes, sir.

Mr. Siciliano: Did she ever give you any orders?

The Witness: No, sir.

Trial Examiner Downing: This is cross-examination. Proceed. If any matters are dangling, straighten them out on redirect.

Mr. Siciliano: Yes.

Q. (By Mr. Thomas): Mary Mosesian talked to you alone or in the group?

A. Harry with with me on election day.

Q. What did she say?

A. She said, "The election is going to be this afternoon."

Q. What else did she say? [87]

A. "You fellows have to go and vote. If you said no, that means us. If you said yes, that goes Union." That is all she told me.

Q. Isn't it true that Mary Mosesian called all of

(Testimony of Moses Machoian.)

the men together on the day of the election and said to you men all there together, "You are now going to vote on this election today"? A. No.

Mr. Bamford: May I object at that time? This matter wasn't brought out on direct examination. We are not alleging any group meeting as being an unfair labor practice. The questioning seems to me to be beyond the scope of the direct examination and, too, irrelevant and immaterial.

Mr. Thomas: If Your Honor please, the reason we are asking that is that we wish to show through the employers that at the time of the election, they told the employees that insofar as they were concerned, they voted whichever way they wanted to vote, that it was none of their business.

Trial Examiner Downing: Is that the purpose for which the testimony is being adduced?

Mr. Thomas: That is correct.

Trial Examiner Downing: The objection will be sustained.

Q. (By Mr. Thomas): Mr. Machoian, you have testified that all of the other men smoked in the warehouse, including Mr. Justice? [88]

A. Yes.

Q. Did you see Bob Krikorian smoke in the warehouse? A. Yes, sir.

Q. Did you see him smoke near the——

A. Yes.

Trial Examiner Downing: Just a moment. Wait for the question, please, before you try to answer.

(Testimony of Moses Machoian.)

You can't answer something you haven't heard.

Q. (By Mr. Thomas): Did you see Bob Krikorian smoke—— A. Yes.

Trial Examiner Downing: Wait until the question is finished, please, sir.

Q. (By Mr. Thomas): Did you see Bob Krikorian smoke among the cardboard cartons?

A. Cardboard cartons?

Q. Yes.

A. No. He smoked on the ground. You never smoke on the cardboard.

Q. Where on the floor did Bob Krikorian smoke?

A. On the cement floor like this, in the warehouse.

Q. Where?

A. Even upstairs and downstairs. It is a cement floor.

Trial Examiner Downing: In the warehouse?

The Witness: Yes.

Q. (By Mr. Thomas): Did he smoke before Mrs. Mosesian? [89] A. What?

Q. Did he smoke in front of Mrs. Mosesian?

A. Yes, lots of times.

Q. You mean that Mrs. Mosesian saw him smoking? A. Yes.

Q. Did he smoke in front of Louise Mosesian?

A. Yes.

Q. You saw this? A. Yes, I saw it.

Q. You saw him smoking in front of her?

A. Yes. Louise saw him smoking and she never

(Testimony of Moses Machoian.)

tell a word to me or Bob or anybody. I don't know. I never heard.

Q. Did you ever see Eddie Ejadian smoke?

A. Yes, sir.

Q. Did he smoke inside the warehouse?

A. Inside the warehouse and outside on the platform, yes.

Q. Did you see him smoke in front of Mrs. Mosesian? A. I never seen him, no.

Q. Did you see him smoke in front of Louise Mosesian?

A. I don't know. I never seen him.

Trial Examiner Downing: Did you see him smoke in front of Mr. Justice?

The Witness: Yes.

Q. (By Mr. Thomas): Did you see him smoke in front of Mary Mosesian? [90]

A. I smoked. She never tell me anything. I don't know about anybody else.

Trial Examiner Downing: That is not the question. Read the question, please, Mr. Reporter.

Now, listen to the question, and answer it, please.

(Last question read.)

A. Who, me?

Q. (By Mr. Thomas): No, Eddie.

Trial Examiner Downing: Did you see Eddie smoke in front of Mary Mosesian?

The Witness: I can't see them all, but I did see they all smoking over there.

Q. (By Mr. Thomas): That is not the question I asked you, but you did see Bob Krikorian smoke in front of Mrs. Mosesian?



(Testimony of Moses Machoian.)

A. I saw him one time, but she didn't say nothing.

Q. And he said nothing? A. No.

Trial Examiner Downing: Did you ever smoke in front of Mrs. Mosesian?

The Witness: Sometimes, yes, but she didn't say nothing about us smoking.

Trial Examiner Downing: She said nothing to you at all?

The Witness: No. She said nothing about me smoking.

Trial Examiner Downing: Were you in the warehouse at the time? [91]

The Witness: No, when we was working in there.

Trial Examiner Downing: I say, when you were smoking in front of Mrs. Mosesian, were you in the warehouse at the time?

The Witness: I was in the warehouse or on the platform.

Trial Examiner Downing: Which was it, warehouse or platform?

The Witness: Warehouse.

Trial Examiner Downing: Which?

The Witness: The warehouse. I was smoking in front of her and she didn't tell me a word about the smoking.

Q. (By Mr. Thomas): Where did Mr. Justice smoke? A. He see me lots of times.

Trial Examiner Downing: The question is, where did he smoke?

(Testimony of Moses Machoian.)

The Witness: Mr. Justice? He smoked everywhere, inside, outside.

Q. (By Mr. Thomas): Did Mr. Justice ever go between the stacks?

A. Yes, he was sometimes.

Q. Did you ever see him smoke between the stacks?

A. No. I see him smoke everywhere. He goes over the stacks with a cigar in his mouth or a pipe is in his mouth.

Q. When you say he smoked every place, Mr. Machoian, what did he smoke?

A. Who? [92]

Q. Mr. Justice.

A. Mr. Justice smoked a pipe, smoked cigars.

Q. When he went into the warehouse, was his pipe lit?

A. Yes. He smoked a pipe, when I seen him.

Q. Have you seen it lit?

A. Yes, every day.

Q. In the warehouse? A. Yes.

Q. Where we say it was forbidden to smoke?

A. Yes. He comes over there lots of times, give us the order, and do this or do that, and he had the pipe in his mouth smoking, or a cigar.

Q. They were always lit?

A. Always what?

Q. The cigar. A. Yes, smoking.

Trial Examiner Downing: By "between the stacks," do you mean the stacks of goods there on the warehouse floor?

(Testimony of Moses Machoian.)

The Witness: Well, he come over there and——

Trial Examiner Downing: Listen to my question. Where are all these stacks that you are talking about? I don't know. You mean the stacks of goods?

The Witness: Flour or rice or everything.

Mr. Thomas: I didn't hear the answer.

Trial Examiner Downing: Stacks of goods. It could have [93] been smoke stacks in his original answer. That is what I wanted to know.

The Witness: I can't give all the names—— flour——

Trial Examiner Downing: That is enough.

Q. (By Mr. Thomas): Mr. Justice didn't restrict his smoking spot aiseways?

A. You just tell me again.

Q. Mr. Justice didn't only just smoke in the aisles?

A. He smoked any place. What do you mean, "aisles"?

Q. You have aisles in the warehouse that go straight down.

A. When he went in the stacks, he smoked. [94]

\* \* \*

Q. Were you ever warned during the period of your employment [96] with the State Center Warehouse to stop singing and dancing? A. No.

Q. Mr. Machoian, isn't it true that Louise Mosesian came out to near the middle elevator to where you and Harry were working, sometime be-

(Testimony of Moses Machoian.)

fore the election, and told you to stop singing and dancing, that this was no wedding but a warehouse?

A. No.

Q. Mr. Machoian, isn't it true that on several other occasions during your employment from November of 1948 to April 12, 1949, in the presence of Harry Ekzoozian, that Louise Mosesian warned you to stop singing and loud talking and that you were disturbing the office?

A. No, sir.

Q. Mr. Machoian, isn't it true that in Harry Ekzoozian's presence Mary Mosesian told you, while you were employed at the State Center Warehouse, during working hours to stop your singing and loud talking?

A. No, sir.

Mr. Bamford: May I have the question read back, please.

Mr. Thomas: Will you read that back, please, Mr. Reporter?

(Last question read.)

Q. (By Mr. Thomas): On at least two separate occasions, because you were disturbing the office?

A. No.

Q. Mr. Machoian, isn't it true that in Harry Ekzoozian's [97] presence Mrs. Twodi P. Mosesian told you to stop singing and your loud talking during working hours on several occasions?

A. No.

Q. That you were disturbing the office?

A. No, sir. [98]

\* \* \*

## Redirect Examination

By Mr. Siciliano:

Q. Now, you mentioned that you saw Robert Krikorian smoke? A. Yes.

Q. In front of Mama Mosesian? How many times did you see him smoke?

A. I can't see him all the time. I just saw him once.

Q. You saw him once? A. Once.

Q. Now, where was this?

A. In the warehouse.

Q. In the warehouse? A. Yes. [102]

Q. Inside the warehouse?

A. Inside the warehouse. [103]

\* \* \*

## LOUISE MOSESIAN

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

## Direct Examination

Mr. Bamford: I am calling Miss Mosesian as an adverse witness under 43-B.

\* \* \*

Q. Did you hear Mr. Machoian testify with respect to an incident in the boxcar, the so-called second incident, in [104] which Machoian said that you had spoken to him about his Union activities at his former place of employment, Sohigian's?



(Testimony of Louise Mosesian.)

A. Yes.

Q. You heard that testimony?

A. Yes, sir, I did.

Q. In substance, did such a conversation take place?

A. No, sir.

Q. Did you ever discuss with Machoian his Union activities?

A. No, sir, I haven't.

Q. Did you know he was a member of the Union?

A. I did not know, sir.

Q. Did you suspect he was a member of the Union?

A. No, sir. I didn't have the remotest idea.

Q. When did you first hear of the Union attempt to organize State Center?

A. A man by the name of Bob Franklin called and said he wanted to see us, an inter-relations man here in Fresno.

A. When was that?

A. A couple of weeks before we received a letter from the National Labor Board.

Q. That is the first letter in which the Teamsters had filed a petition?

A. Yes, sir.

Q. It was stipulated that that letter was mailed on February 10th. I suppose that it was a day or so after that, that [105] you received the letter?

A. Yes, sir.

Q. But Mr. Franklin had called you several weeks before, is that correct?

A. About a couple of weeks before. I think he said that someone by the name of McDonald had called him and said that he wanted to see Bob

(Testimony of Louise Mosesian.)

Franklin regarding the State Center Warehouse, and Bob came over to see us at our home and he said McDonald had told him that the warehouse boys were unionizing, and so Bob told us that we had——

Mr. Thomas: If Your Honor please, there are so many Bobs here that I suggest the witness say Bob Franklin.

A. (Continuing): Bob Franklin, and he said we had to call an election. So we just let him take the steps, because we didn't know what it was all about.

Trial Examiner Downing: Who is Bob Franklin with?

The Witness: He is an inter-relations man here in town. He used to own the Franklin Refrigerator. He is an inter-relations man here in town.

Trial Examiner Downing: When he came to see you, was he representing the Union?

The Witness: No, sir.

Trial Examiner Downing: How did he get into it?

The Witness: Well, before the Taft-Hartly Bill went into effect, we had some little squabble with the Union [106] pickets about a year or so before that, and so we went to a friend of ours and he told us to go to Bob Franklin.

Trial Examiner Downing: Franklin was representing you, then?

The Witness: Yes, sir.

Trial Examiner Downing: He was what you might call your labor consultant?

(Testimony of Louise Mosesian.)

The Witness: Yes, sir.

Q. (By Mr. Bamford): Essentially, you turned over the problem to him? A. Yes.

Q. That was before you received the letter from the NLRB, advising that they had filed a petition?

A. Yes. That was a couple of weeks before that.

Q. Do you know Mike Sohigian?

A. Yes, I do.

Q. He is the manager of what company, do you know? Industrial Scientific Company?

A. Yes, sir. That is the name.

Q. How long have you known him?

A. I have known him practically all my life.

Q. Is he related to your family?

A. No, sir.

Q. Is he a close personal friend of your family?

A. Well, we used to be both in the same singing chorus. [107] We both took singing lessons from a Molly Marshall, and he used to be in our singing chorus. That is how I knew Michael. I knew him through the church.

Q. Well, is he a close personal friend?

A. Well, he is a casual friend, not that I would say close, but I know him. I just knew him mostly through this singing class that we used to go to at Molly Marshall's. There was a group that used to go once a week, and he was in the singing class. I know him pretty well.

Q. You see him socially? A. Yes.

Q. Do you ever go to his house?

(Testimony of Louise Mosesian.)

A. Yes. I know his wife very well. We go to the same church.

Mr. Thomas: Will you ask the question again?

Mr. Bamford: Will you read back the question?

(Last question read.)

A. No, sir, I don't make it a point to go to his house.

Q. (By Mr. Bamford): Well, you go there from time to time?

A. If I see him in front of the house, I will stop and talk to him.

Q. Is his house nearby yours?

A. No, sir.

Q. Has he ever come to your house?

A. Yes, he has. [108]

Q. How often does he come?

A. He has been there on several occasions with his wife and his family.

Q. That is within the past year or so?

A. Yes, sir.

Q. Did you ever speak with Sohigian about this Teamster attempt to organize your plant?

A. No, sir.

Q. On any occasion? A. No, sir.

Q. Did you ever discuss Moses Machoian's employment with him? A. Yes, sir, we have.

Q. How did that arise?

A. Well, one day this Sohigian stopped in to visit the family for a minute.

Q. When was this?

A. This was right after the first—it was after the holidays.

(Testimony of Louise Mosesian.)

Trial Examiner Downing: Which holidays?

The Witness: Last year.

Trial Examiner Downing: Christmas?

The Witness: After New Year's, I think it was.

Q. (By Mr. Bamford): That is, Christmas of 1948, is that correct? [109]

A. About the first part of the year or——

Q. Or the first part of January 1949?

A. Yes, sir. And we were discussing just everything in general. I asked him if he was still singing for Molly's class, and he said, well——

Trial Examiner Downing: Let's get down to Machoian.

The Witness: We were discussing just everything in general, the ice cream parties that the church was having, and it was just a general conversation and talking about business and everything in general, and I said, "Say," I says, "of all the people, my mother sure does hire some crazy people. We have a man in the warehouse, that all he does is just sing Turkish songs and dances around." And he said, well, he says, "It looks like we all have the same problems." And I asked him who the fellow was. He said, "A fellow by the name of Mose."

And I said, "Well, isn't it funny. We have a fellow by the name of Mose, too, that does singing and dancing around, a fellow you can't tell anything to."

And so we exchanged the names and it was the same fellow. [110]



(Testimony of Louise Mosesian.)

Trial Examiner Downing: Was he working for both of you at the same time?

The Witness: No, sir. That particular day that Mike Sohigian had called with his family to visit us, that was the day that I had given Machoian 'Holy Pat' for singing in a boisterous voice, and talking and singing and dancing around in the warehouse. I bawled him out that day for it.

Q. (By Mr. Bamford): Now, at that time you hadn't received word either from the NLRB or from Franklin, that you were being organized?

A. No, sir.

Q. That occurred before that?

A. That occurred before that.

Q. And in that conversation nothing was said about Machoian's Union activities?

A. No, we didn't discuss it. [111]

\* \* \*

### Cross-Examination

By Mr. Thomas:

Q. Who else was present at the time of this meeting, Louise, with Sohigian?

A. That night that Sohigian visited at our family home, [117] Harry Ekzoozian and his wife had stopped in to see my mother, too, around that part.

Trial Examiner Downing: Who?

The Witness: Harry Ekzoozian and his wife. And I think Violet Misikian, my sister Mary, my

mother. I was there, and I don't remember if there was anyone else there or not.

Q. (By Mr. Thomas): When you were talking to Mr. Sohigian, what did Mr. Sohigian say about Mr. Machoian?

A. Well, the conversation was general. He says he discharged Machoian because Machoian was breaking dies and wasting material, and we laughed over the word "die." I didn't know what "die" was. I said, "What did he do? Die?" And he said, "He broke dies." [118]

\* \* \*

### MICHAEL SOHIGIAN

a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

\* \* \*

By Mr. Bamford:

Q. Do you know Moses Machoian?

A. Yes, sir.

Q. Did he ever work for you? A. Yes, sir.

Q. What period of time, do you remember?

A. October 1, 1946, to approximately January 21 of 1948.

Q. Do you know the Mosesian family?

A. Yes.

Q. Specifically, do you know Louise Mosesian?

A. Yes.

Q. How long have you known her? [120]

A. Approximately 20 years.

(Testimony of Michael Sohigian.)

Q. Did you ever discuss Moses Machoian with Louise Mosesian? A. Yes.

Q. On more than one occasion? A. Yes.

Q. Do you remember on the first occasion when you discussed Machoian?

A. I don't remember the date exactly, but I do remember the occasion.

Q. Well, could you give us an idea as to when that was?

A. I am of the impression that it was during the holiday season, the end of the year, of 1948.

Q. And what was the occasion?

A. Our family was paying a visit to the Mosesian family.

Q. And by your "family" who do you mean?

A. My wife and my three children.

Q. Was this at the Mosesian home?

A. Yes.

Q. Who else was present?

A. I don't know the last name of the girl, but her first name is Violet. I think it was Misikian, if I am not mistaken. And Mr. and Mrs. Harry Ekzoozian.

Q. Was Mrs. Twodi Mosesian there?

A. Mrs. Mosesian was present. [121]

\* \* \*

Q. And what was said and by whom concerning Moses Machoian?

A. In a general course of conversation it was mentioned that there was a gentleman working at

(Testimony of Michael Sohigian.)

the warehouse of the Mosesian's, and there was some description regarding his conduct.

Q. Could you tell us what that conduct was and what the description was in substance?

A. Yes. The substance was that his conduct was of an offensive nature and that he was smoking when he was asked not to and that it was not allowed in the warehouse, and also that he was of a boisterous nature and frequently sang in a loud voice, and that he had been asked not to do so but repeated to do so.

Q. And that was the substance of the conversation?

A. Yes.

Q. Concerning Machoian?

A. Yes.

Q. Now, on any other occasion did you discuss Machoian?

A. That wasn't all of the substance. I am sorry.

Q. Please continue.

A. The remainder of it, as it went along, interspersed with small talk regarding family and children.

Q. But with respect to Machoian?

A. With respect to Machoian, I asked—rather, I said, [122] “Well, that sounds familiar.” I said, “Who is this man?” or something of that nature. I said, “I had someone working for us there that seemed to answer that description.” And they told me, and I said, “Well, he had worked for us at one time.” And we went on talking about things in general. I mentioned that he had been discharged from our employ because of incompetence, ineffi-

(Testimony of Michael Sohigian.)

ciency, and that in substance was, I think, perhaps all that was said.

Trial Examiner Downing: Did you specify in what respects he was incompetent and inefficient?

The Witness: Yes, I did.

Trial Examiner Downing: In what respects did you state?

The Witness: In respect to this, may I explain that in our plant my particular job had to do with the supervision of part of the men in the department that is assigned to me, and in that department I observed repeatedly that Mr. Machoian needed an extreme amount of supervision and that he was incapable of putting the correct labels where they belonged, and I at no time called this to his attention, because I thought that he was incapable of correcting himself.

Trial Examiner Downing: My question relates to what you said to the Mosesians in regard to why you found him incompetent.

The Witness: Well, I told them just that as well as that on several occasions when he was asked to work on punch [123] presses, that he had inserted not one piece of work into the die but two, which would on occasion stop the machine and on one occasion broke a die, and that I had been told by the supervisor in that department that such was the case and I had been asked to talk to him, explain to him, that on several occasions he had been warned about that, and that he apparently continued to do that without regard, I should say, continually. [124]



(Testimony of Michael Sohigian.)

Q. (By Mr. Bamford): Now, did you ever discuss Machoian with Louise Mosesian on any other occasion? A. Yes, I did.

Q. And when was that?

A. It was subsequent to this occasion, but I can't in all honesty recall the exact dates or even approximate dates.

Q. Well, tell us how the conversation took place. Was it by telephone or in person?

A. I don't remember any conversation by telephone. In person.

Q. And where did this occur?

A. In their home.

Q. Who was present?

A. Mrs. Mosesian, Louise Mosesian, and Mary Mosesian.

Q. Do you remember how you happened to go there? [125]

A. Yes, just as a casual visit.

Q. Do you remember being interviewed on May 27, 1949, by an NLRB Field Examiner?

A. I don't remember the date but I do remember the interview, yes.

Q. And did you give the Examiner a sworn statement?

A. I gave her a statement but I don't remember whether it was sworn or not.

Q. You signed the statement, at any rate?

A. I think I did, yes.

Mr. Bamford: Excuse me just a moment, Mr. Examiner.

(Testimony of Michael Sohigian.)

Q. Is this the statement? A. I think so.

Q. Now, would you read that statement, please.

Mr. Thomas: May I interrogate here? That is all in the handwriting of somebody else.

Trial Examiner Downing: He has identified the statement. He has been asked to read it so far. I don't think there is anything before me up to this point.

Q. (By Mr. Bamford): Now, looking at the——

Trial Examiner Downing: He hasn't finished reading it.

Mr. Bamford: I am sorry.

The Witness: Am I to read it?

Mr. Bamford: Yes.

Trial Examiner Downing: I think you asked him. [126]

The Witness: All right.

Q. (By Mr. Bamford): Have you finished?

A. Yes.

Q. For purposes of refreshing your recollection, I am wondering if you would start with the second paragraph, down about the third sentence. You say, "Sometime before the Union election at State Center Warehouse and Cold Storage Company, Louise Mosesian telephoned me."

Now, does that refresh your recollection on the second meeting? A. No, it doesn't.

Q. You have no independent memory?

A. No, sir.

Q. At this time?

A. No, sir. This subject as well as this inter-

(Testimony of Michael Sohigian.)

view has been so foreign from my line of work or my consciousness that I can't say that I remember these things all exactly as they appear here.

Trial Examiner Downing: When did you last see the statement?

The Witness: This statement?

Trial Examiner Downing: Yes, or a copy of it.

The Witness: I haven't seen it since apparently this was written.

Trial Examiner Downing: When were you last questioned [127] with reference to the subject matter of the statement?

The Witness: I haven't been questioned at all.

Trial Examiner Downing: Since it was taken?

The Witness: Yes.

Q. (By Mr. Bamford): The events were fresh in your mind, though, at the time you gave the affidavit, weren't they?

A. The events having to do with Mr. Machoian?

Q. Yes.

A. Not necessarily even then, for the simple reason that his working for us and his subsequent discharge was of no particular interest or it was uneventful to us. It was an occurrence with which we had to do on a number of occasions and it presented no particular interest. It was not singular in its aspects.

Q. I don't want to impeach you, Mr. Witness, but your memory was very fresh on an incident which had occurred before this alleged incident, and I am wondering if you could explain how it happens that——

(Testimony of Michael Sohigian.)

A. At the time this was taken, I think that the young lady who took this statement will recall that I was exceedingly busy, as we very often are, and I was forced to go in and out of the place on a great many occasions and, very frankly, though the expression I wish to use is not necessarily "resent," but I was anxious to be rid of the situation so that I could continue with my work. [128]

Trial Examiner Downing: I should like to ask whether, after having read the statement here, there is any respect in which you wish to change any of the testimony you have given up to this point, after having read the statement? Is there?

The Witness: Any changes?

Trial Examiner Downing: In the testimony you have given up to now, having read the statement, that you wish to make?

The Witness: Not in any of the testimony I have given now.

Q. (By Mr. Bamford): You signed the statement? A. Yes.

Q. Did you read it before you signed it?

A. Yes, I did.

Q. Then you signed it after you read it?

A. Yes.

Q. Do you remember being administered the Oath by the Field Examiner? A. No.

Q. You notice the jurat on the statement?

A. The what?

Q. The jurat.

A. I don't know what you mean.

(Testimony of Michael Sohigian.)

Trial Examiner Downing: Right at the end.

The Witness: Yes, I do.

Trial Examiner Downing: Was that on there when you signed it?

The Witness: I don't remember.

Q. (By Mr. Bamford): Well, let's discuss then the second discussion you had with Louise Mosesian concerning Machoian.

A. Not necessarily with Louise directly, with all the family.

Trial Examiner Downing: Now, when was that? I don't think that the time has been fixed.

Mr. Bamford: Well, the witness stated that he didn't know the time exactly.

Trial Examiner Downing: Well, let's fix it with reference to the time elapsing after the first one during the holidays. How long after that was it, roughly?

The Witness: The closest I could honestly come to it would be that it would be a matter of months.

Q. (By Mr. Bamford): Well, during this discussion was the subject of an NLRB election at their plant discussed? A. I don't recall.

Trial Examiner Downing: Does your reading of the statement refresh your mind any in that respect?

The Witness: The statement says so, yes.

Trial Examiner Downing: I am asking you if it refreshes your mind any. I am not asking you what the statement says. [130] It is not in evidence at this time.



(Testimony of Michael Sohigian.)

The Witness: Not with any degree of certainty.

Trial Examiner Downing: Does it refresh your mind at all?

The Witness: It refreshes my mind only in so far as—well, I can't point out exactly here. [131]

\* \* \*

Q. (By Mr. Bamford): Do you remember discussing in this second conversation with the Mosesians anything concerning a possible election, an NLRB election, with the Mosesians?

A. I can't peg it to the second, because we have had hundreds of conversations with these people over a period of years, and certainly subsequent to the first time, we have talked to them. We have talked on numerous occasions but there [137] has been conversation in that regard.

Q. With respect to NLRB elections?

A. Yes.

Q. Well, I am merely trying to find out now if you can place the date of this conversation?

A. I can't place the date conscientiously, no.

Q. Could you have discussed that at this meeting?

A. I suppose I could have.

Q. Could you have discussed Machoian's Union activities with them at this meeting?

A. I suppose I could have.

Mr. Thomas: I object to this line of questioning, your Honor. I don't quite understand—

Mr. Bamford: You will understand the meaning of it, counsel. Do you think that the questions are irrelevant?

(Testimony of Michael Sohigian.)

Mr. Thomas: They are asking for pure suppositions without any evidence. [138]

\* \* \*

Cross-Examination

By Mr. Snell:

Now, you testified on direct examination that you conversed with the Mosesians on occasions subsequent to the meeting at the home of Mrs. Mosesian?

A. Yes, sir.

Q. And that on those occasions you discussed Mr. Machoian? A. Yes, sir.

Q. Do you have any recollection as to any specific instances [143] when you so discussed Mr. Machoian with the Mosesians?

A. Nothing specific, but they were varied insofar as the place of discussion was concerned.

Q. Do you have any recollection of specifically discussing Mr. Machoian with Louise Mosesian subsequent to the first meeting at Mrs. Mosesian's home? A. Yes.

Q. What was that occasion?

A. On subsequent visits to their home as well as that I would drop into their office once in a while. I can't recall whether we have actually discussed the subject there or not.

Q. On direct examination you stated that you discussed Mr. Machoian with the whole family on these various occasions. A. Yes.

Q. Are these the occasions you are referring to, when you say that you discussed them with Louise Mosesian? A. Yes.

(Testimony of Michael Sohigian.)

Q. Were you talking generally to the group or did you talk to one particular person within the group? A. To the group generally.

Q. Do you know whether Louise Mosesian was listening to you at the time you made the statement?

A. I think I would be safe in saying yes.

Q. Do you remember specifically ever discussing the matter of the election at the State Center Warehouse with the [144] Mosesians? A. Yes.

Q. Do you remember when those discussions occurred?

A. No, not definitely, but I am of the opinion that it was a matter of months after the first time we had occasion to discuss Mr. Machoian.

Q. Would you say it was two months after the first occasion? A. I think so.

Mr. Bamford: Just a second. May I have the last question read back, please.

(Last question read.)

Q. (By Mr. Snell): Would you say that it was two months after the first discussion with the Mosesians at their home?

A. I wouldn't want to say definitely, because it would be, I would say, guesswork.

Q. Do you know when the election was held, the Union election was held, at the State Center Warehouse? A. No, I don't know.

Trial Examiner Downing: Was it before the election was held?

The Witness: I don't know anything about the election. I don't know when it was held.

Q. (By Mr. Snell): To the best of your recol-

(Testimony of Michael Sohigian.)

lection, it was months after the first conversation, that you discussed this matter? [145] A. Yes.

Q. Do you remember at the first conversation at the Mosesians if you discussed Mr. Machoian's Union activities with the Mosesians?

A. I don't remember definitely.

Q. Do you remember discussing Mr. Machoian's Union activities at any time subsequent to that?

A. Yes.

Q. Would these conversations have occurred at the same time as you have placed the prior discussions of the election?

Mr. Bamford: May I have that question back, please.

Mr. Snell: I will rephrase the question.

Q. You have testified that it was a matter of months after the first conversation, that you discussed the matter of the Union election with the Mosesians? A. Yes.

Q. Did the discussion of Mr. Machoian's activities occur at the same time as the discussion of the Union election? A. I can't remember.

Q. It could have been earlier or it could have been later? A. Yes.

Q. You have no independent recollection?

A. No, sir.

Trial Examiner Downing: Do you understand that you are testifying that on some occasion you discussed the subject of [146] Machoian's Union activities with the Mosesians?

The Witness: Yes, sir.

(Testimony of Michael Sohigian.)

Trial Examiner Downing: With which ones?

The Witness: All of them in general. I can't peg the conversation to any one particular person.

Trial Examiner Downing: Was that on one of the visits at their home?

The Witness: Yes.

Trial Examiner Downing: How did the subject of his Union activities ever come up?

The Witness: I don't remember.

Mr. Snell: We have no further questions.

Trial Examiner Downing: Any redirect examination?

Mr. Bamford: No further questions.

Trial Examiner Downing: How did the subject of the election happen to come up, the National Labor Relations Board election?

The Witness: I don't recall.

Trial Examiner Downing: Was it something that was to happen in the future or was it already something that had occurred?

The Witness: I don't know until this moment whether or not such an election has occurred, so I guess that it would be safe to say that it was something to occur in the future in relation to that time. [147]

Mr. Snell: I would like to have the answer stricken, because he has by his testimony shown that he is simply surmising that he doesn't know. [148]



(Testimony of Edward Ejadian.)

EDWARD EJADIAN

a witness called by and on behalf of General Counsel, being [150] first duly sworn, was examined and testified as follows:

Direct Examination

\* \* \*

By Mr. Siciliano:

Q. Now, while you were working there, did you ever think about joining the Union? A. No.

Q. Did anyone ever come to you and ask you about joining a union? A. Yes, sir.

Q. Do you remember when this was?

A. No, I don't remember.

Q. Who came and asked you about the Union? Who did you talk about the Union with?

A. They talked to me about the Union.

Q. Who?

A. I think it was Bob.

Q. Bob? A. Bob Krikorian.

Q. Did Moses ever talk to you about the Union?

A. Well, later on, yes.

Q. What did he say to you?

A. He said, "It is a good thing to join the Union." [152]

\* \* \*

Q. Did Louise ever come and ask you anything about the Union? A. I don't remember that.

Q. Were you ever working around the warehouse when Louise came to see you?

(Testimony of Edward Ejadian.)

A. It has been so long, I even forget those things. [155]

Trial Examiner Downing: Let me ask you this question, Witness: Were you ever present when Louise said something about having a letter from the Labor Board about the Union?

The Witness: I don't remember that. [156]

\* \* \*

Q. Do you know if your mother-in-law works?

A. Yes. She works on Saturdays over there.

Q. Over where? [159]

A. Over at the Mosesians.

Q. Over at the Mosesians? A. Yes.

Q. What does she do there?

A. Housework.

Q. Did she ever tell you anything about your job?

Mr. Thomas: Wait. I just don't know what the mother-in-law would tell him would be admissible in evidence.

Mr. Siciliano: That is what we hope to show.

Mr. Thomas: Actually, it is pure hearsay.

Mr. Siciliano: We hope to show that the mother-in-law was actually the agent for the Mosesians.

Mr. Thomas: If the mother-in-law is here, you can have her testify.

Trial Examiner Downing: If the mother-in-law is available as a witness, her own testimony would certainly be more direct, one step nearer.

Mr. Siciliano: We recognize that, but as to the effect of the statements made on this particular

(Testimony of Edward Ejadian.)

witness, we hope to show that the mother-in-law was, in effect, an agent of Mrs. Mosesian, who was told to say certain things to her son-in-law.

Mr. Thomas: Don't you have to establish the agency first? [160]

\* \* \*

Q. (By Mr. Siciliano): Mr. Ejadian, did your mother-in-law bring you a message from Mrs. Mosesian about the Union, about joining the Union?

A. Yes. I think I understood. She says if I ever joined the Union, she is going to put me out.

Q. Who said that?

A. Mrs. Mosesian. That is what I understood.

Q. She didn't say that to you?

A. She told that to my mother-in-law.

Q. And your mother-in-law told you?

A. She told me that.

Q. When did your mother-in-law tell you that?

A. I don't remember.

Q. Where was it? Was it at your mother-in-law's house?

A. Yes.

Q. You went there to visit?

A. Yes.

Q. Was it in the evening? [161]

A. Evening, I think.

Q. Was this before the election?

A. After.

Q. This was, when your mother-in-law came and talked to you, this was after the election was already over with?

A. No, before.

Q. Before the election?

A. Yes.

(Testimony of Edward Ejadian.)

Q. Was anything said about Moses Machoian to you?

Trial Examiner Downing: By whom?

Q. (By Mr. Siciliano): By your mother-in-law?

Mr. Thomas: If your theory is that his mother-in-law is an agent for Mrs. Mosesian to convey a message to him, how do you get Machoian in on the picture?

Mr. Siciliano: We are trying to show that part of that message extended to Machoian. [162]

\* \* \*

Mr. Bamford: If Mrs. Mosesian tells her housekeeper to relay a message to her son-in-law, she thereby appoints as her agent the housekeeper to relay that message. [163]

\* \* \*

Mr. Siciliano: I will just repeat that last question. I think that will be about the last, too.

Q. Did your mother-in-law tell you that Mrs. Mosesian had told her anything about Moses, about Moses joining the Union?

Mr. Thomas: You made her an agent. Now, if you are going to put up your question of agency, you didn't—you said there that Mrs. Mosesian said something to his mother-in-law as an agent to convey it to him.

Mr. Siciliano: That is what we have been saying so far.

Mr. Thomas: Her statement with regard to

(Testimony of Edward Ejadian.)

Machoian's joining any Union is certainly not an agency direction.

Trial Examiner Downing: I will permit the testimony to be developed under the previous ruling.

Q. (By Mr. Siciliano): Mr. Ejadian, did your mother-in-law say anything to you about Moses Machoian?

A. I can't remember those, because it has been so long and I forgot all those things. [165]

\* \* \*

Q. (By Mr. Siciliano): And how long did you talk to her?

A. I don't remember that.

Q. A half an hour, an hour?

A. I don't remember that. Maybe, something like that.

Q. And did she put some things down in writing? A. I think so.

Q. And did she read them to you?

A. Yes, sir.

Q. Can you read? A. I can't read.

Q. But she did read them to you?

A. If she read them, I forget them anyhow. I forget all of those things. I can't remember them all.

\* \* \*

Mr. Bamford: We just wanted to see if the reading of the affidavit would refresh the witness' memory. It will just take a second, Your Honor.

Trial Examiner Downing: Yes.

Mr. Bamford: This is our last point.



(Testimony of Edward Ejadian.)

Mr. Siciliano: I am not going to read it all, just one paragraph.

Trial Examiner Downing: Now, Witness, I want to explain to you that counsel is going to read to you from a paper [166] which was written by Mrs. Phoenix, the lady in the room here, after talking with you about this case. You listen to it and you see if you remember the statement you gave, and say whether or not that refreshes your mind about the question that he has been asking you.

The Witness: Yes.

Q. (By Mr. Siciliano): I will read just these few words here: "Before the election, my mother-in-law, Agnes Azidigian, who works Saturdays doing housework with Mrs. Mosesian, told me that Twodi had said to her that if Mose and I joined the Union, she would fire us."

Does that help you remember at all? Does that refresh your recollection as to what your mother-in-law told you? A. I think so.

Trial Examiner Downing: Do you remember now?

Q. (By Mr. Siciliano): Do you remember now?

A. I think so now, because it has been so long, I forget.

Mr. Siciliano: That is all.

Trial Examiner Downing: Was that statement that counsel read to you correct?

The Witness: Yes, sir. [167]

(Testimony of Edward Ejadian.)

Redirect Examination

By Mr. Siciliano:

Q. Eddie, yesterday, we asked you some questions. One of the questions I asked you was: Did your mother-in-law ever tell you anything that Mrs. Mosesian had told her to tell you.

A. Machoian?

Q. Mosesian. Your mother-in-law worked for Mrs. Mosesian? A. Yes.

Q. Now, yesterday I asked you a question, I asked: Did your mother-in-law tell you anything that Mrs. Mosesian had told her about the Union?

Trial Examiner Downing: Do you remember being asked that question?

The Witness: Yes.

Q. (By Mr. Siciliano): Do you remember what you said yesterday? A. Yes.

Q. What did you say?

A. She told my mother-in-law if I joined the Union she was going to——

Trial Examiner Downing: She was going to what?

The Witness: You got me puzzled.

Q. (By Mr. Siciliano): Well, can you remember? What did [184] she tell you?

A. I think she said if we joined the Union, she was going to get better men.

Q. She said nothing else?

A. That is all she told me.

Q. Is that what you said yesterday, Eddie?

(Testimony of Edward Ejadian.)

A. I don't remember, maybe I did, maybe I didn't.

Q. But you remember what you said yesterday?

Trial Examiner Downing: He has already testified to that.

Mr. Siciliano: Mr. Examiner, we are just trying——

Trial Examiner Downing: He was asked on Cross-Examination if he remembered what he said yesterday, and he said "No." I think this is proper Redirect Examination.

Q. (By Mr. Siciliano): Do you remember what you said yesterday to us here downstairs?

A. Yes, sir.

Q. What did you say then?

Mr. Thomas: If Your Honor please, what is the purpose of this? If he is going to impeach the witness——

Mr. Siciliano: No.

Mr. Bamford: If Respondent's counsel is going to object, may the witness be excused so we can argue this out without his presence?

Trial Examiner Downing: If there is an objection, I [185] will overrule it.

Do you remember what you said yesterday from the witness stand with reference to what your mother-in-law told you? Was it the same as you have said this morning or was it something different?

The Witness: I can't remember it. [186]

Mr. Thomas: If Your Honor please, at this time I would like to move that the testimony of Eddie Ejadian, which he gave yesterday in connection with the refreshing of his memory, be stricken from the record, because it is shown here today that there was no such recollection or refreshing of his memory since he can't remember from one day to the next what he testified to. [187]

\* \* \*

LOUISE MOSESIAN

recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

Direct Examination

\* \* \*

By Mr. Thomas:

Q. Are you an officer of the State Center Warehouse and Cold Storage Company?

A. Yes, sir, I am.

Q. What is your title?                      A. Secretary.

\* \* \*

Q. Who did the firing and hiring of your warehouse employees during the period of November '48 to April '49?                      A. My mother is the boss.

Trial Examiner Downing: That doesn't quite answer it. The question was, who does the hiring and firing?

The Witness: My mother does, and, if she isn't there, we do it, Mary and I do it.

Q. (By Mr. Thomas): Have you actually fired anyone?

(Testimony of Louise Mosesian.)

A. No, sir, not directly without consulting Mrs. Mosesian.

Q. Your mother? A. Yes.

Trial Examiner Downing: The question I would like to ask, before you pass on, is: When your mother isn't there, who is the boss?

The Witness: Either Mary or I.

Trial Examiner Downing: Suppose you are both there. Which of you is the boss?

The Witness: It depends. When she starts something, I never interfere. When I start something, she never interferes.

Trial Examiner Downing: Who takes the first action? [193] It depends upon who takes the first action in the matter?

The Witness: Yes, and then we consult, and whoever got on the subject first, she does the talking.

Trial Examiner Downing: All right, proceed.

Q. (By Mr. Thomas): Actually, you three women run Paul A. Mosesian and the State Center Warehouse?

A. Yes, sir. We have the last word.

Q. Were there any 'No Smoking' signs in the warehouse during the period of November, 1948, through April of '49?

A. Yes, sir. There has been 'No Smoking' signs in that warehouse since the time Mr. Nixon was there. That is about—over 30 years. There has always been 'No Smoking' signs on the pillars of that warehouse.

Q. And they have been there for 30 years?



(Testimony of Louise Mosesian.)

A. Yes, sir.

Q. And any other 'No Smoking' signs?

A. We always put 'No Smoking' signs all over the building, but the employees pull them down. I have a 'No Smoking' sign in the upstairs building where Paul Mosesian keeps paint thinner, and I have told the boys not to ever get near that paint thinner.

Mr. Siciliano: Mr. Examiner, I don't know if that is too responsive to the question. The question was originally about signs.

The Witness: Yes, there are signs in the building. From [194] time to time the men pull them down but they can't pull the signs down that have been stenciled on the pillars. But the other signs, they pull them down.

Trial Examiner Downing: How fresh are those stencils? Do you mean to tell me they are 30 years old?

The Witness: Yes, sir. Mr. W. C. Nixon, when the warehouse was first built in 1918, those signs are still there with his name on them, W. C. Nixon.

Trial Examiner Downing: Under the "No Smoking"?

The Witness: Yes, sir. There are pillars there and they are stenciled on there.

Trial Examiner Downing: But they have not been freshly stenciled there for 30 years?

The Witness: No, sir. They have been up there ever since I can remember. [195]

(Testimony of Louise Mosesian.)

Q. (By Mr. Thomas): Are you able to clearly read these stenciled signs? A. Yes, sir.

Q. What sort of ink are they?

A. They are stencil ink, that black ink.

Q. It is heavy black ink?

A. Heavy black ink. It is the only kind of ink the warehouse uses for stenciling. Regular stenciling.

Q. Are there any painted 'No Smoking' signs?

A. As you go down to cold storage, there is a little white painted spot, and there has been a 'No Smoking' sign for a long time, but somebody has crossed or done something with it.

Q. Crossed it with what?

A. Crossed it with chalk or something.

Trial Examiner Downing: When was it first put there?

The Witness: It has been there ever since I have been there.

Trial Examiner Downing: And when was it first marked over with chalk or something else?

The Witness: That was marked over—I don't remember the exact date, but somebody has just crossed it.

Trial Examiner Downing: Well, the date is somewhat important, you know, with reference to Machoian's employment. [196]

The Witness: Somebody has crossed that out.

Trial Examiner Downing: I know, but when was that done? How long ago was that done?

(Testimony of Louise Mosesian.)

The Witness: It was before the election. The sign was all right until after the election. Somebody just went and put some crosses on it.

Trial Examiner Downing: After the election, it was crossed?

The Witness: Yes.

Q. (By Mr. Thomas): By marking the sign or crossing it out? What do you mean?

A. It says "No Smoking," and somebody has put a big cross like this across it.

Q. The sign is perfectly legible, however?

A. Yes, sir.

Q. Do you know Moses Machoian?

A. I know him from the warehouse, yes, sir.

Q. Did he work for the State Center Warehouse? A. Yes, sir.

Q. Who employed Moses Machoian?

A. My mother.

Q. Do you remember the circumstances of his employment? A. Well, he——

Q. I haven't asked you that. Do you remember?

A. Yes.

Q. Where was he employed? [197]

A. In our home.

Q. At? A. 1146 "R" Street.

Q. Who was present at the time Machoian was employed?

A. His wife. I presume it was his wife. There was a lady with him. And Harry Ekzoozian and Harry's wife, and my mother and I.

Q. Who brought Machoian to your home?

(Testimony of Louise Mosesian.)

A. Harry Ekzoozian.

Q. Tell us in your own words what was said by the various parties present at the time of his employment? Relative to his employment?

A. Well, Harry brought Machoian over and Harry said that Machoian went to him and wanted a job. So he brought Machoian and his wife, and they came over to the house and we were sitting—it was quite warm. It was a warm day. We were all sitting on the back service porch. And Machoian said that he had nothing to do and wanted a job. So mother told him, “Well, when I hire anybody, I usually want somebody to stay all the time, because it causes a lot of headaches for somebody to learn the stock and then, if you break someone in and they get up and go, then it just means we have to break someone else in.”

He said that he had a steady job every year some place, some packing house, and from what I understood it was a raisin-packing [198] house, and he said he just wanted it temporarily.

And his wife told me that this man, her husband, she said, “Please tell her to please give him a job, because when he gets out of bed in the morning, he goes to the coffee houses and plays cards all day and comes home all of the early hours of the morning.” [199]

\* \* \*

Q. Did your mother mention smoking to Mr. Machoian?

A. Yes, sir. She told him that there was no smoking in the building, in the warehouse, because

(Testimony of Louise Mosesian.)

the merchandise in there belonged to everybody and we did not carry insurance on it; whoever put the merchandise there, carried their own insurance and she didn't want any trouble; positively no smoking in the building.

Q. Was anything else said at that time relative to his employment?

A. Well, he said that he would report to work Monday, the following Monday, but he didn't report to work, and then—— [200]

\* \* \*

Q. (By Mr. Thomas): When did you talk to Mr. Machoian?

A. I have talked to him on several occasions. You mean one particular incident? Is that what you want me to tell you about?

Q. About when was the first time?

A. After the packing house season, when I came back from the packing house.

Q. Which would be about when?

A. That was about in December. I came back because the packing house closed November 13th and I stayed out there a couple of weeks, by the time I closed everything up. I used [202] to check the warehouse in the morning and look at the wires and the mail, and then go out.

Trial Examiner Downing: Let's not go into that.

The Witness: About December.

Q. (By Mr. Thomas): That was the first time you had a conversation with him? A. Yes.

Q. Was anyone else present?



(Testimony of Louise Mosesian.)

A. Yes, sir. Harry Ekzoozian.

Q. Do you recall where in the warehouse?

A. In the big room near the elevator.

Trial Examiner Downing: What floor?

The Witness: We have a basement on the first floor, sir.

Q. (By Mr. Thomas): Not the basement?

A. No, sir, not the basement.

Q. Will you please tell us what happened.

A. Working in the office, all at once some music bursted forth just as loud as you can possibly——

Trial Examiner Downing: You mean a musical instrument?

The Witness: No, a voice, singing very loudly in the Turkish language, singing on top of his lungs, and I went out there and I said, "What do you think this is? A place of work, or is this a wedding?"

And he was singing just on the top of his voice and just [203] like, you know, snapping your fingers. He was jumping around.

And I said, "What the heck goes on here anyway? We can't concentrate in the office. This is no place to sing."

Trial Examiner Downing: Do you understand Turkish?

The Witness: No, sir, but I know what it is.

Trial Examiner Downing: Did you know what song he was singing?

The Witness: No, sir. He was singing just as loud as he possibly could, at the top of his voice.

(Testimony of Louise Mosesian.)

Q. (By Mr. Thomas): What was Harry Ek-zoozian doing while Mr. Machoian was singing?

A. Harry was stacking something. I don't know what he was doing. I just went right up to him, and I gave him "holy Pat." "What is this you are doing around here? We are trying to work in the office. You are bursting forth with loud singing."

Q. Did you tell your mother about this?

A. Yes, sir, I did.

Q. Was there any other occasion when you talked to Mr. Machoian about his singing and dancing?

A. Several times after that, he bursted forth with his loud—— [204]

\* \* \*

Q. (By Mr. Thomas): Was there any other occasion when you talked to Mr. Machoian about his singing and dancing and loud talking?

A. Yes, sir, I did. This man—— [206]

Q. Wait a minute. Do you recall about when that was?

A. It was around about the first of the year. He was working alone and singing to himself again.

Trial Examiner Downing: Where were you?

The Witness: In the building.

Trial Examiner Downing: In the office of the warehouse?

The Witness: I was in the warehouse.

Trial Examiner Downing: How did you happen to hear him?

(Testimony of Louise Mosesian.)

The Witness: Because I went into the warehouse. We have a room where we store papers and past records and things.

Trial Examiner Downing: But you didn't hear him from the office?

The Witness: No, I didn't hear him from the office. I was going to the wire room in the back, where we usually keep some cancelled checks and papers and things, and I heard him singing again and I said, "Hey there, quit it. How many times do I have to tell you?"

Trial Examiner Downing: He was singing while he worked?

The Witness: Yes, sir.

Trial Examiner Downing: Singing to himself?

The Witness: Well, he was singing quite loudly, sir.

Q. (By Mr. Thomas): Did you tell your mother about these subsequent occasions?

A. Yes, sir, I told her. [207]

\* \* \*

Trial Examiner Downing: I think counsel is trying to avoid leading. I will ask the question.

Do you recall any incident where you went into the boxcar and made some reference to the group of men there to a letter which you had from the Labor Board?

The Witness: No, sir. I went to a boxcar, but I never said anything about a letter. No, sir, that is wrong.

(Testimony of Louise Mosesian.)

Q. (By Mr. Thomas): Do you remember why you went to that boxcar?

A. It was after lunch hour one day. It was around the first. It was around the holidays. I had come back from the packing house and something had happened in the boxcar. I couldn't figure what it was. These men were always arguing among themselves. There was a big pow-wow going on all the time.

Trial Examiner Downing: Can you fix the time?

The Witness: Around the first part of the year. I came back after lunch—it was about 1:15 one day—and I heard these men having a——

Trial Examiner Downing: I am not sure that is going to reach the incident you are interested in, is it, Mr. Thomas, around the first of the year?

Mr. Thomas: That is the only one that we are familiar with, Your Honor.

Trial Examiner Downing: All right, proceed.

\* \* \*

Q. (By Mr. Thomas): Who was present in the boxcar? A. The boys of the warehouse.

Q. Who were they?

A. Machoian and Harry and Eddie and I don't know whether Bob was there or not. There was a fellow by the name of Bob Krikorian. There were just three or four of them in the car.

Mr. Thomas: Mr. Reporter, would you read back the place where she stopped in her testimony?

Trial Examiner Downing: Where she said there

(Testimony of Louise Mosesian.)

was a big pow-wow going on in there and she walked in and told what she said.

(Record read.)

Q. (By Mr. Thomas): Now will you tell us what you said?

A. I said, "What goes on there, fellows? It is a quarter after 1:00, 20 after 1:00, right after lunch hour. What is the [212] argument about?"

And when I went in there, Machoian's voice was louder than the rest of them, and I said, "Get to work. What the heck is it? If you fellows don't want to work, you better go on home. Wait until I tell the Old Lady on you."

Trial Examiner Downing: Did anyone say anything in reply?

The Witness: The argument was between Machoian and Harry Ekzoozian. They didn't tell me what the argument was. I just stepped in the car, told them that, and moved on.

Mr. Bamford: I move that the whole boxcar incident be stricken as irrelevant.

Trial Examiner Downing: Granted.

Mr. Thomas: If Your Honor please, I believe in the testimony that was given by Machoian it is only his contention that she had received the letter and had mentioned it at the time.

Trial Examiner Downing: That is right. But she is testifying to an incident that occurred earlier in January. That obviously couldn't have been the same incident and, the way she testifies to it, it



(Testimony of Louise Mosesian.)

doesn't seem to be relevant to any of the issues here.

Mr. Thomas: Well, maybe it will be, if I ask her the next question, did she at any time subsequent to this incident have any other meeting in the boxcar with the men.

Trial Examiner Downing: I thought your position was, a while back, that the incident she is testifying to is the only [213] boxcar incident.

Mr. Thomas: The only way I can prove that is to ask if there was any other boxcar incident.

Trial Examiner Downing: I will permit the question to be put.

Mr. Bamford: Will you read the question, please?

Trial Examiner Downing: It hasn't been put yet. I will permit it.

Mr. Thomas: I am sorry. I thought you said you wouldn't.

Trial Examiner Downing: I will permit it to be put.

Q. (By Mr. Thomas): Was there any other boxcar incident outside of this one that you have testified to?      A. I——

Mr. Bamford: Just a moment.

Trial Examiner Downing: Just a moment.

Mr. Bamford: I am going to object to the way that question is put. If counsel wishes to ask whether there was any discussion in the boxcar regarding Union activities and membership, very well and good.

Trial Examiner Downing: The first answer to

(Testimony of Louise Mosesian.)

the question will be yes or no. Your objection will be premature until the follow-up question is put.

Was there any other incident in the boxcar, involving Machoian?

The Witness: We had strict instructions from Bob Franklin [214] not to talk to any of the men.

Trial Examiner Downing: That doesn't answer the question. The question is, was there any other incident in the boxcar——

The Witness: No, sir.

Trial Examiner Downing: ——involving Moses Machoian?

The Witness: No, sir; there wasn't.

Mr. Bamford: Mr. Examiner, I move to have the Bob Franklin answer stricken.

Trial Examiner Downing: May I hear the Bob Franklin statement?

(Record read).

Trial Examiner Downing: Motion denied.

Mr. Bamford: Mr. Examiner, I suggest for the sake of the reporter we take a five-minute recess.

Trial Examiner Downing: Take a ten-minute recess.

(Recess had.)

Trial Examiner Downing: The hearing will be in order.

Q. (By Mr. Thomas): Did you mention Machoian's Union activities at that time?

A. No, sir.

Trial Examiner Downing: At which time?

Mr. Thomas: At the time of the boxcar. She has

(Testimony of Louise Mosesian.)

testified that there was only one boxcar incident, Your Honor.

Q. (By Mr. Thomas): Did you mention Machoian's Union activities during this boxcar incident?

A. No, sir.

Q. Did you mention Mr. Sohigian?

A. No, sir.

Mr. Bamford: Mr. Examiner, we are willing to stipulate that. Her testimony has been that it occurred before any Union activity took place.

Trial Examiner Downing: Not necessarily. She said around the first of the year. That is as definitely as she has fixed it.

Q. (By Mr. Thomas): Did you ever discuss the Union or Union activities with Mr. Machoian at any time? A. No, sir.

Q. Did you ever warn Mr. Machoian about smoking in the warehouse? A. Yes, sir.

Q. Would you please tell the Court on what occasions and who was present?

Trial Examiner Downing: Tell us the first time you warned him.

The Witness: I warned him right after I came back from the packing house, which was the latter part of—around December. I warned him several times in December and in January. I told him positively no smoking in the building. I don't smoke, I am allergic to—— [216]

\* \* \*

Q. Was anyone else present when Harry complained about Machoian's work?

(Testimony of Louise Mosesian.)

A. No, sir. Harry told me that directly. [221]

Q. Will you please tell the Court directly——

Mr. Bamford: May we have the time, the place?

Mr. Thomas: Pardon me.

Q. Do you recall when this occurred?

A. It occurred—it was before the election, because he kept telling me that this man had a sore finger and he was carrying all the load. When they were throwing sacks, his middle finger was sore and he was dropping all the weight on Harry.

Mr. Bamford: I move to strike that answer as immaterial, Mr. Examiner.

Trial Examiner Downing: Overruled.

Mr. Bamford: May I have a continuing objection to all questions and answers pertaining to Machoian's work, except for smoking, singing and dancing?

Trial Examiner Downing: That isn't in line with the issue tendered by the Answer as amended. The Answer is broader than that. I suggest you make your objections as the questions are put.

Did you tell your mother that Harry had complained about Machoian's sore finger?

The Witness: Yes. I told her. I am sure I told her, yes, sir. [222]

\* \* \*

Q. (By Mr. Thomas): Did you know that Machoian was interested in a Union during the period of his employment? A. No, sir.

Q. Did you know he was carrying on any Union activities?

A. No, sir, I didn't know anything.

(Testimony of Louise Mosesian.)

Q. Did you make any attempt to find out?

A. No, sir.

Q. When did you first learn that the "Teamsters' Union was interested in organizing the plant?

A. Bob Franklin came to us, telephoned our home and said that Mr. McDonald had called him, a Mr. McDonald. I don't know who he is. He said he wanted to see us.

Trial Examiner Downing: How long was that before you got the letter?

The Witness: That was about 10 days, something like that, 10 days or two weeks. I don't remember exactly.

Q. (By Mr. Thomas): Did Mr. Franklin come to see you?      A. Yes, sir, he did.

Q. What did he tell you? [223]

A. He said that this Mr. McDonald had said that the boys had joined the Union and we had to have a contract with them, and Franklin said, "If you folks don't want a contract, we have to call an election."

Trial Examiner Downing: Mr. Thomas, wasn't this discussed when this witness was on the stand for General Counsel?

Mr. Bamford: Counsel has spoken to me about this. We are both uncertain as to the exact extent of her testimony yesterday, and I said it was perfectly all right for him to go ahead.

Trial Examiner Downing: All right, proceed.

Mr. Thomas: Will you read the last there, where she was interrupted?



(Testimony of Louise Mosesian.)

(Record read.)

Q. (By Mr. Thomas): Did he say anything else?

A. And he gave instructions to us not to discuss anything with the men. He said it was a law, you are not supposed to talk to any of the men. He said if there was anything, to take it up with him.

\* \* \*

Q. Yes, but we are not after an exact figure. We just want your best approximation. Was it one time, five times, ten times?

A. Well, it happens. After all, it is a warehouse. It happens. Things disappear out of it.

Q. To your knowledge, did you or any other officer of the corporation ever speak to Ejadian about this matter?      A. About who?

Mr. Thomas: Wait a minute. We haven't accused Mr. Ejadian of pilfering. The only thing that has been testified to was the suspicion that he may have and, therefore, the key was taken from him.

Trial Examiner Downing: I will permit the examination to proceed. I will overrule the objection.

The question was brought up whether she ever spoke to Ejadian about it.

### Cross-Examination

By Mr. Bamford:

Q. Did you or any of your family ever speak to Ejadian about this incident occurring in the morning?

(Testimony of Louise Mosesian.)

A. No, sir. Bob Franklin told us not to discuss it. It [234-237] was his business. That was his work, not to discuss it.

Q. Well, I am interested in why you decided to keep an employee whose honesty you say you have reason to doubt and in the face of repeated pilfering from your warehouse, why did you do that?

A. Well, Bob Franklin at that time told us if we let the man go and told them it was for taking something out then this fellow can turn around and sue you; he said, "Just leave it alone. Just let the matter rest. I will take care of it. Just drop the subject."

Trial Examiner Downing: Did he say how he would take care of it?

The Witness: He said, "Let me take care of it."

Trial Examiner Downing: How did he take care of it?

The Witness: Well, he didn't take care of it. He went out of the picture, and Mr. Thomas came into the picture. [238]

\* \* \*

### AGNES AZIDIGIAN

a witness called on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Bamford:

Q. Will you state your name and address for the record, please?      A. Agnes Azidigian.

(Testimony of Agnes Azidigian.)

Trial Examiner Downing: Your address?

The Witness: 2426 Mono.

Q. (By Mr. Bamford): Do you work for Mrs. Mosesian? Work for her as a housekeeper?

A. Yes.

Q. How long have you been doing this work?

A. It is over five years.

Q. Is Eddy Ejadian your son-in-law?

A. Yes.

Q. Did Mrs. Mosesian ever speak to you about the Union coming into Center Warehouse?

A. No. [240]

Q. Did you understand that question?

A. Yes, I understand.

Q. Did she ever speak to you about Eddie's job at the warehouse?

A. She told me if Eddie belonged to Union, she don't keep him—like these workers, better workers.

Trial Examiner Downing: Now tell us again what Mrs. Mosesian said.

The Witness: "If warehouse belong Union, I don't keep these workers, I don't keep like these workers—better workers."

Q. (By Mr. Bamford): When was this, do you remember?

A. Around, I think, May or June.

Q. In what year? A. 1949.

Q. How did it come up? How did the talk come up?

A. Oh, I was doing the housework, and she told me, that is all.

(Testimony of Agnes Azidigian.)

Q. How did the subject come up? Did she just say that?

A. She just said it. That is all. Nothing else.

Q. What had you been talking about at the time?

A. She said that to me so I can tell my son-in-law.

Q. She told you to tell your son-in-law?

A. Yes.

Trial Examiner Downing: Did she tell you to tell Eddie [241] that?

The Witness: Yes.

Trial Examiner Downing: She did?

The Witness: Yes.

Trial Examiner Downing: What did she say about telling Eddie?

The Witness: That is what I was saying, the same thing she says. Nothing else she said to me.

Trial Examiner Downing: Did she tell you to go and tell Eddie that?

The Witness: Yes.

Trial Examiner Downing: Did you tell him?

The Witness: Yes. I tell him.

Trial Examiner Downing: When?

The Witness: When? I don't remember when.

Trial Examiner Downing: Was it the same day or later?

The Witness: Later. Pretty late I told him.

Trial Examiner Downing: How much later?

The Witness: I can't remember that. [242]

(Testimony of Agnes Azidigian.)

Trial Examiner Downing: I should like to ask one question before cross-examination.

Did Mrs. Mosesian give you any message to Moses Machoian?

The Witness: No.

Trial Examiner Downing: Only to Eddie?

The Witness: Only Eddie.

Trial Examiner Downing: Did she mention Moses Machoian, when she was talking about Eddie and the Union in the warehouse?

The Witness: No.

Trial Examiner Downing: You may cross-examine. [244]

\* \* \*

### Cross-Examination

By Mr. Thomas:

Q. Do you remember the day that you—what you were doing when she talked to you about Eddie or about the Union?

A. I was in the diningroom, I think, cleaning carpets, see. She was sitting down on a couch, when she told me, the diningroom couch.

Q. She definitely told you to tell your son what she said? A. Yes.

Q. Your son-in-law? A. Yes.

Trial Examiner Downing: You will have to speak, so the Reporter can't get the nod of a head. You will have to say yes or no.

The Witness: Yes.



(Testimony of Agnes Azidigian.)

Q. (By Mr. Thomas): She just didn't make a statement and ask you a question? A. No.

Q. Didn't she say to you, "What would you do, if you were in my case?"

A. No, she didn't say nothing; she didn't say nothing.

Q. She gave you a direct message to take to Eddie? A. Yes, that is all she says.

Q. And this occurred in May or June of [245] 1949? A. Yes.

Q. Are you sure of that?

A. Yes, I am pretty sure.

\* \* \*

Q. Why do you say that this conversation took place in May or June of 1949?

A. She says that about that time, see, I can tell him.

Q. What makes you remember it occurred in May or June of 1949?

A. Because my boy graduated from high school that time and I remember then.

Q. I see. And it was while the graduating exercises were going on? A. Yes.

Q. Do you know the exact date when your boy graduated? A. June 11th. [246]

\* \* \*

Q. It was around the graduation day?

A. Yes, right around.

Q. What were the exact words that Mrs. Mosesian said?

(Testimony of Agnes Azidigian.)

A. "If warehouse become Union, I don't keep like these workers—better workers."

Q. She didn't mention Edward's name?

A. No, she didn't mention.

Q. But she did tell you to tell Edward?

A. Yes.

Q. Is that the only statement Mrs. Mosesian made to you?      A. That is all she said. [247]

Q. When Mrs. Mosesian was talking to you, was her statement that if the warehouse goes Union she would get better workers?      A. Yes.

Q. She did not say that if Eddie joins the Union he will lose his job?      A. No, no. [248]

\* \* \*

### LOUISE MOSESIAN

resumed the stand, and was examined and testified further as follows:

#### Cross-Examination

(Continued) [276]

\* \* \*

The Witness: He wants to know how many signs were put up after Machoian left, is that it?

Trial Examiner Downing: You are answering a question that you did not finish.

The Witness: Yes, but what was the question?

Mr. Bamford: Will you read the last question and answer, please?

(The last question and answer was read back by the Reporter).

(Testimony of Louise Mosesian.)

The Witness: We put up extra signs after Machoian left, because we had a terrific fire on the ranch. We had a big apartment house burned down on the ranch, an employee's apartment house. It cost in the neighborhood of eight or ten thousand dollars. The employees left a cigarette and the whole thing came down in ashes. [285]

Q. (By Mr. Bamford): Where was this?

A. Fresno Vineyard Ranch.

Q. When?

A. 1949, about 1949. We had a terrific fire out there. In fact, we have had a terrific fire on our Lindsey Ranch. One of our big apartment houses burned down on account of a cigarette.

Q. When was that?

A. That was in '47 I think it was '47.

Q. But where was the other one you say burned in '49? A. The Lindsey Ranch.

Q. The one in '49?

A. Fresno Vineyard Ranch, right across the street from a packing house. We couldn't get any decent insurance out of the thing at the time, either.

Mr. Bamford: Counsel are willing to stipulate that the apartment house in the Fresno Vineyard Ranch burned down in 1949—in July, 1949?

\* \* \*

Q. (By Mr. Bamford): And you put up these new signs after [286] this fire?

A. We have always had extra signs like that in the office.

Q. But you said that you talked about putting

(Testimony of Louise Mosesian.)

up a lot of extra signs after Machoian was fired?

A. Well, that is when this fire took place. After that, we put some signs up. I can't remember how many. [287]

\* \* \*

Q. Isn't it a fact that your own manager, Mr. Justice, smokes regularly in the warehouse?

A. I don't know. I don't follow him around the warehouse, but every man knows before he is hired that he is not supposed to smoke in that building.

Q. Have you ever seen Mr. Justice smoke in the building? A. I have seen him bite a pipe.

Q. Have you ever seen him smoke, not bite a pipe?

A. Yes, I have seen him in the office.

Q. In the warehouse?

A. I don't follow him around in the warehouse. I have my work to do.

Q. Well, you have testified that you caught Moses Machoian many times smoking in the warehouse. Now, did you [289] follow him around?

A. No, but I go in the building to bring records from upstairs, or records from downstairs. I look around to see what the men were doing. After all, I am paid to see what is going on.

Q. Were you following Machoian around?

A. No, I was not following Machoian around.

Q. But do you go in the building very often?

A. I go in often.

Q. And you have never seen Mr. Justice smoke in the warehouse?

(Testimony of Louise Mosesian.)

A. I have seen him bite a cigar. He has a habit. He puts a cigar in his mouth and he chews on it, but as a rule he doesn't light it.

Q. Well, he does sometimes though?

A. He does sometimes.

Q. And he smokes in the warehouse?

A. I haven't seen him. I know he bites the cigar, but I don't know if he is smoking.

Q. Did he bite a pipe?

A. I have seen him bite a pipe for hours and hours with nothing in it.

Q. That may be. Did you ever see him smoking a pipe in the warehouse?

A. I have seen him smoking in the office, but I have [290] not seen him smoking in the warehouse. I haven't followed him enough to know that he smokes.

Q. But you followed Machoian enough to know that he smokes?

A. No, sir, I just walked in on Machoian and saw him smoke, and I told these men time and time again that they can't smoke in the building.

\* \* \*

Q. (By Mr. Bamford): Now, to go back to the period when Moses Machoian was working in the warehouse, you say that you cautioned him several times against smoking?

A. Yes, sir, I did.

Q. And that was in the face of "No Smoking" signs, which were stencilled?



(Testimony of Louise Mosesian.)

A. Yes, sir. He knew that he wasn't supposed to smoke, because the day we hired him, my mother told him, "No smoking in the building. There is no smoking," and everyone—every man is told that before they come in that warehouse. There [291] are sacks and cartons, and everything else in there, and I have seen too many fires in our business. I have worked for 25 years and I have seen some terrific fires on our ranches. I have seen a great big tank house burn down.

\* \* \*

Q. (By Mr. Bamford): Does your mother smoke?      A. Occasionally.

Q. Did you ever see her smoke in the warehouse?      A. I don't follow my mother around.

Mr. Thomas: Just a moment. If your Honor please, what Mrs. Mosesian does as an employer, it is her responsibility, it is her warehouse, and if she burns it down it is her responsibility, but if her employees who are working in the stacks are told not to smoke, what she does is absolutely nothing in connection with what the employees are supposed to do.

Trial Examiner Downing: It would be relevant on the question of whether the rule against no smoking was promulgated in good faith and was intended to be obeyed. I will overrule the objection.

Mr. Bamford: Will counsel stipulate that Mrs. Mosesian regularly smoked in the warehouse?

Mr. Thomas: I wouldn't stipulate to that fact,

(Testimony of Louise Mosesian.)

because it isn't true. Your Honor, I don't understand [292] why when your men are working around your sacks, there can be any question of whether or not the ruling with regard to your employees is the same as with regard to Mrs. Mosesian, who never lifts a sack.

Trial Examiner Downing: It is a question of whether the rule was actually in existence and whether it was a bona fide rule, and was intended to be observed.

Mr. Thomas: I don't see what Mrs. Mosesian's doing has anything to do with that.

Trial Examiner Downing: The objection will be overruled.

Q. (By Mr. Bamford): Did you ever see your mother smoke in the warehouse, Miss Mosesian?

A. I know she smoked, but I don't know whether she smoked in the warehouse or not.

Trial Examiner Downing: What does she smoke, cigarettes?

The Witness: Yes, sir. She doesn't smoke very much, just an occasional cigarette.

Q. (By Mr. Bamford): But you have never seen her smoke in the warehouse?

A. I have never followed her around to see if she smokes in the building or not, but I know that she comes and sits in the office and smokes a cigarette. [293]

(Testimony of Louise Mosesian.)

Q. To go back to the "No Smoking" signs, Miss Mosesian——

A. Yes, sir.

Q. ——I am trying to get an answer from you as to whether you can say of your own knowledge whether or not there were any "No Smoking" signs, apart from the stencil signs, in the warehouse, at the time Machoian worked there?

A. Our office—I mean the front office where I work, right out the door where the old bookkeeper used to sit for many years, right out that door is where we have all kinds of Paul Mosesian records and warehouse records and that is where we keep all our stationery and all our papers and everything else. That sign has been on that door, well, since the war. We used to have a lot of soldiers. The Government used to store a lot of stuff in that warehouse and they used to work in that middle warehouse. The Government used to put in stuff and take it out and put it in and take it out, and those soldiers used to come and unload and do the work, and that sign on that door right by [294] Joe Chambille's desk, former Joe Chambille, that sign has been there since the war. It is a big "No Smoking" sign.

Trial Examiner Downing: Was it ever pulled down?

The Witness: I don't know if it ever was pulled down. As far as I know, it is the same sign.

Q. (By Mr. Bamford): Then you can say positively that that sign was there during the time that——

(Testimony of Louise Mosesian.)

A. That sign has always been there. We have our records and everything there, and if anything happened there—the Internal Revenue comes in and checks those records from time to time—where would we stand?

Q. That sign?

A. That sign has always been there.

Q. Do you know of any other signs that have always been there and would include the period that Machoian was working there?

A. I have a sign upstairs that has always been there and has been pulled down from time to time. It is a department where we keep private things like shovels, and hoes, and packing house scales, and what have you, things that people can pick out and go with. I keep that under lock and key and we have some paint thinner there, and I have that right above the door so that they don't smoke around this paint thinner. [295]

Q. Do I gather from that answer that there are only certain places in the warehouse you are not supposed to smoke?

A. You asked me what signs have always been there.

Q. Well, I gather from your answer that they can smoke some places and not in others?

A. Not in that warehouse. They are not supposed to smoke.

Q. And that sign has been there?

A. Well, it has been pulled down from time to time, but on account of that paint thinner, I have

(Testimony of Louise Mosesian.)

always tried to replace it as fast as I can. I have given the men 'holy pat' and they know they are not supposed to smoke in that building.

Q. Do you know the last time that that sign was pulled down?      A. No, I don't know.

Q. Do you know if it was ever pulled down during the time that Moses Machoian was there?

A. No, I don't remember that.

Q. But you can say positively that there were at least some "No Smoking" signs up?

A. There were some "No Smoking" signs in the building when Moses Machoian was there. He knows that.

Q. Now, do you remember being interviewed on this case by Mrs. Phoenix, the Examiner here present?      A. Yes. [296]

\* \* \*

Q. (By Mr. Bamford): When was the first occasion on which you reprimanded him?

A. After I came back from the packing house.

Q. About which month?      A. In December.

Q. The first part or latter part?

A. I didn't keep a record of it. I told you I didn't keep a record of anything. [323]

Q. But you testified this morning that it was the latter part of December but you don't know now?

A. It was after I came back from the packing house in December.

Q. Yes, and where did this reprimand take place?      A. In the building.



(Testimony of Louise Mosesian.)

Q. What part of the building?

A. The center of the building.

Trial Examiner Downing: What floor?

The Witness: First floor.

Q. (By Mr. Bamford): What time of day was it?

A. I didn't keep track of the time of the day.

Q. Morning or afternoon?

A. I don't remember.

Q. Who was present? A. Machoian.

Q. Anyone else?

A. I was there, of course, and Harry Ekzoozian.

Q. Anyone else?

A. I don't remember of anyone else being there.

Q. Now, on other occasions beyond this, you warned Machoian about smoking, after you had caught him smoking, is that correct?

A. Yes. I told him not to smoke.

Q. And on each of these occasions did you actually see him [324] smoking or did you smell the smoke? A. I saw him smoking.

Q. You actually saw him smoking each time?

A. Yes, sir. I saw this man smoking. As soon as I would go up to him, he would take the cigarette and he would hide it like this in his hand, and I actually opened his hand and took the cigarette out of his hand.

Q. Each time?

A. On one special occasion I pulled the cigarette out of his hand.

(Testimony of Louise Mosesian.)

Q. But only on one occasion? A. Yes.

Trial Examiner Downing: Was it lit?

The Witness: Yes, sir, it was lit.

Q. (By Mr. Bamford): On the other occasions, did you actually see the lighted cigarette?

A. I didn't see him light the cigarette. I saw him smoking a cigarette.

Q. Yes.

A. And I saw him take a cigarette, put it on the floor, and rub it out, when he saw me coming.

Q. Now, how many times altogether would you say that you saw Machoian smoking and you reprimanded him?

A. On several occasions. I didn't keep track of it.

Q. Could you give us an approximation? "Several" might mean [325] anywhere from two to fifty, I gather. A. That is right.

Q. Could you get it closer? Was it five, ten, three? A. At least a half dozen times.

Q. At least a half dozen times?

A. At least a half dozen times.

Trial Examiner Downing: And the first time was in December. When was the last time?

The Witness: I don't remember, sir.

Q. (By Mr. Bamford): Was it before the election or after the election?

A. It was after the election.

Q. That was the last time, is that right?

A. Yes, sir.

(Testimony of Louise Mosesian.)

Q. Did you see him smoking on the day he was fired?

A. No, sir. I didn't see him the day he was fired.

Q. Did you see him smoking in the week before he was fired?      A. I can't remember.

Q. Now, I believe you said this morning that every time that you caught Machoian smoking, Ekzoozian was with him, is that correct?

A. I didn't say that. I didn't mean it that way, anyway.

Q. Well, was he usually with him?

A. Well, Ekzoozian was his partner.

Q. Was he usually with him? [326]

A. Usually, yes, sir.

Q. So that would you say that on at least four occasions you reprimanded him in front of Ekzoozian, is that right?

A. I wouldn't say how many times but Harry was there on several occasions. I didn't keep a record of this. I didn't know this was all coming up.

Q. We are just trying to find out what your best memory is.

A. Yes, but I didn't keep a record of all this. I didn't know. Heavens!

Q. Well, you said that—I don't want to seem to be arguing with you but I am just trying to find out how many times Ekzoozian was present when you reprimanded him.

A. I didn't keep a record of it, sir.

Q. Would you say that it was at least three times?

(Testimony of Louise Mosesian.)

A. Well, I couldn't say anything. It was on several occasions. You know, when you are working in an office and concentrating and trying to write wires and code and everything else and have to go through the building to bring papers from the wire room and this and that, why every time I saw a cigarette, I saw red. [327]

Trial Examiner Downing: There were "No Smoking" signs. The record can show that during the noon recess the Trial Examiner made an inspection of the premises in the presence of counsel for the parties and that there were a number of [330] "No Smoking" signs stencilled on the pillars, mainly at one end of the building, the north end, mainly at that end. At occasional other spots in the building there were also other stencilled signs.

There is testimony that Machoian worked all over the building. Now, what difference does it make if the signs were only at the north end? They were visible to anyone. [331]

\* \* \*

Trial Examiner Downing: Well, the record, of course, doesn't show what I know, except to the extent that I stated on the record a moment ago. I stated that they were chiefly at the north end of the building.

Mr. Thomas: That is correct.

Trial Examiner Downing: There is an occasional stencilled sign at random places elsewhere but very few. There are not over one or two others.

\* \* \*

(Testimony of Louise Mosesian.)

Q. (By Mr. Bamford): Now, on each occasion that you say Machoian smoked and you reprimanded him for it, did you tell your mother?

A. Yes, I told her. I told mother several times. I says, "I don't know what you are going to do. That fellow is going to burn the building down."

Q. Just on several occasions you told her?

A. Yes, I told her.

Q. Or on each occasion?

A. As a rule, when anything happens during the day in the warehouse or ranches, when we go home at night we discuss everything generally with her. It is customary in our house to discuss everything with our mother, everything that is important. She has to know what is going on all the time. [338]

\* \* \*

Q. Well, when you told her that Machoian had been smoking, would you just tell that he had been smoking?

A. No. I said, "That fellow is going to burn the building down." I just wanted her to know what was happening out there.

Q. What would she say?

A. I wouldn't wait to hear what she said. I said, "That is the kind of fellow you hired in the warehouse."

Q. What would she say, when you told her that?

A. It was just a casual conversation. I would tell her, and walk away.

Q. I thought you said that you talked, sat down and talked, [339] about these matters.



(Testimony of Louise Mosesian.)

A. We talk about these things in general.

Q. But as soon as you said that, you walked away?

A. Well, after all, she hired him and I didn't have much to say about it.

Q. Did you ever discuss the possibility of Machoian's discharge with your mother?

A. No, sir, never discussed that. She is the boss. She does what she wants. We tell her what is happening. She makes the decision. We have nothing to say about it. [340]

\* \* \*

Q. Yes, I understand that, but I thought that you testified earlier that before any decision was made, you and your sister and your mother talked it over.

A. Yes, we usually talk it over.

Q. But you never discussed the possibility of Machoian's discharge, is that true?

A. No, sir, not us three together.

Q. Well, did you and your sister discuss it together?

A. I have never discussed it with Mary. I don't remember discussing anything like that with Mary.

Q. Did you ever discuss it with your mother alone?

A. I just told her, "He is going to burn the warehouse down."

Q. But you didn't discuss the possibility of discharging him, is that correct?

A. That is up to her. She is the boss. I don't have anything to say.

(Testimony of Louise Mosesian.)

Q. Well, maybe the final decision is up to her, but did you discuss the possibility of discharging him?

A. I don't remember discussing the possibility of discharging him.

Trial Examiner Downing: Did you recommend it? [341]

The Witness: I certainly recommended it to myself.

Trial Examiner Downing: To your mother?

The Witness: I told her, "He is going to burn the warehouse down."

Trial Examiner Downing: That is as far as you went?

The Witness: That is as far as I went. I said she better do something about it.

Q. (By Mr. Bamford): What was that? You said that you told your mother she better do something about it, is that correct? A. Yes.

Q. But nothing was done, is that correct?

A. Well, it was up to her. I don't make her mind up. She makes her own mind up.

\* \* \*

### Redirect Examination

Trial Examiner Downing: Does Justice work with the men and as one of the members of a two-man team?

The Witness: No, sir. The greater portion of his work is done in the office.

(Testimony of Louise Mosesian.)

Trial Examiner Downing: In the office?

The Witness: Yes, sir.

Trial Examiner Downing: Does he supervise the men at all? [349]

The Witness: Well, he goes out and tells them——

Mr. Thomas: Mr. Examiner, will you ask the witness to talk so that we can hear, too?

Trial Examiner Downing: Yes, talk louder.

The Witness: What was that question again?

Trial Examiner Downing: Does he supervise the men at all, the warehousemen?

The Witness: Well, in case they are unloading a car, he takes the bill of lading and gives it to one of them and tells them, "Now, when you are unloading this car, be sure that all the quarts and pints are here," and tells them where to stack it, and tells them how to stack it, and comes back to the office.

Trial Examiner Downing: When he gives them orders, does he direct them on outgoing goods?

The Witness: Yes, he does part of the time, not all the time.

Trial Examiner Downing: They generally do work under his direction, don't they?

The Witness: Yes, sir.

\* \* \*

Trial Examiner Downing: I got the impression, as I listened to your testimony, that you were the one who was [350] annoyed by Machoian's singing?

The Witness: Yes, sir.

(Testimony of Louise Mosesian.)

Trial Examiner Downing: The rest of the office force were not annoyed by it?

The Witness: I don't know whether the others were annoyed or not, but I know I went after him.

Trial Examiner Downing: I know. Let's talk about yourself. You were the one that complained about his singing?

The Witness: Yes, sir.

Trial Examiner Downing: No one else?

The Witness: I didn't listen to what anybody else had to say. I listened to myself.

Trial Examiner Downing: I asked you, when Machoian was [351] hired, he had a sore finger, and you said, "No."

The Witness: At the time that my mother hired him on the back porch, he didn't have a sore finger then.

Trial Examiner Downing: All right. That is what I'm asking you.

The Witness: No, sir, he didn't.

Trial Examiner Downing: Proceed, Mr. Bamford.

Mr. Bamford: I shall, sir.

### Recross-Examination

By Mr. Bamford:

Q. Well, was Mr. Justice in fact the direct supervisor of those men?

A. What do you mean? He was the boss over them?

Q. Was he their boss?

(Testimony of Louise Mosesian.)

A. Well, yes and no. When Mary and I are there, we are the big boss. I mean he is under us.

Q. When you weren't there, he directed them?

A. Yes, sir.

Q. Who gave the men most of their orders, you or Mary or Mr. Justice?

A. We have an office girl that gives most of the orders.

Q. To the men?

A. Yes. We have a girl there that gives the orders out. Mr. Justice gives it mostly. He comes first.

Q. Can he recommend the hiring and discharge of these men?

A. Who? [352]

Q. Justice.

A. No, sir, we do the hiring and firing of the men.

Q. But does he have the power to effectively recommend their discharge or hiring?

A. No, sir.

Q. And he didn't have the power effectively to recommend hiring and firing, is that your testimony?

A. No. He doesn't have the power to recommend hiring and firing.

\* \* \*

Trial Examiner Downing: That is what I got into, and I will permit the questions by either side. I had assumed that Justice was not only a foreman but a supervisor within the meaning of the Act. I would like to have each of you state your position



(Testimony of Louise Mosesian.)

on whether he is a supervisor or not within the meaning of the Act. What is your position, General Counsel?

Mr. Bamford: He is a supervisor, of course.

Trial Examiner Downing: What is your position, Mr. Thomas?

Mr. Thomas: What is the definition under the Act? Is it the same as under the Wage Hour Law?

Trial Examiner Downing: No.

Mr. Thomas: Is it more extensive or less? [353]

Trial Examiner Downing: More extensive. Section 2, Sub-section 11.

What is your position, Mr. Thomas?

Mr. Thomas: Well, I don't know what "responsibility to direct the men" means, your Honor. None of the other clauses under Section 11 apply to Mr. Justice in the operation of that plant. Now, regarding his "responsibility to direct the men" in the operation of the warehouse, of course, he has the responsibility of filling the orders, any order that comes in.

Trial Examiner Downing: Is he a warehouse manager? Is that his job?

The Witness: Yes.

Mr. Thomas: He is a warehouse manager with a limited authority, Mr. Examiner. I mean it is a peculiar circumstance and setup.

Trial Examiner Downing: What I do not understand is, if he isn't in charge of the warehouse crew, who is?

(Testimony of Louise Mosesian.)

Mr. Thomas: The Mosesians are.

Trial Examiner Downing: There are times when they are not there.

Mr. Thomas: But even when they are there, he doesn't have the right to hire, fire, recommend increases.

Trial Examiner Downing: Well, when the Mose-sians aren't there, it seems to me he is bound to be in charge of [354] them. If that isn't correct, I wish that you would set me straight and elucidate.

Mr. Thomas: Yes, he is in charge of them, but I don't know what would happen if they disobeyed his authority.

Trial Examiner Downing: That isn't enough to throw him outside the term of supervisor. If he responsibly directs them during any appreciable part of the time, I think the Board's decisions go far enough to hold him a supervisor within the meaning of the Act.

Incidentally, the General Counsel here may be able to recall the recent decision where—I think it is a Board decision—where a man was held to be a supervisor, although he performed his supervisory duties for only a very minor part of his time. Is that correct, gentlemen?

Mr. Siciliano: Yes.

Trial Examiner Downing: Do you know the name of the case?

Mr. Siciliano: I don't know the name of the case.

(Testimony of Louise Mosesian.)

Trial Examiner Downing: But there is one this last year, is there not?

Mr. Siciliano: That is correct, sir.

Mr. Thomas: I think under that restricted definition, he probably would come under that definition, because he does direct them in the filling of these orders. You understand by orders—— [355]

\* \* \*

Mr. Thomas: Yes. What is the importance of whether Mr. Justice is a supervisor or not a supervisor?

Trial Examiner Downing: I don't think he is on that point now.

Mr. Bamford: Yes, I am, Mr. Examiner.

Trial Examiner Downing: Oh, you are?

Mr. Thomas: And I would like, if the Court would be pleased enough to advise me, to know why it is important.

Trial Examiner Downing: I think that it would be relevant on the question of why Mr. Justice didn't stop the smoking in the building. That is why I think it is important. The rules were there. He is bound to know them. Why [358] didn't he carry them out? Why didn't he enforce them? That is why I think it is important.

Mr. Thomas: Are you trying to show that these were within his powers, his rules?

Trial Examiner Downing: Not within his rules, but they were the rules of the plant and well known. Then why didn't Mr. Justice enforce them?

(Testimony of Louise Mosesian.)

Mr. Thomas: Because it wasn't his duty.

Trial Examiner Downing: It certainly is, if he is in charge of the warehouse. [359]

\* \* \*

Trial Examiner Downing: Now, counsel proposes to refresh her memory, if possible, by reading this affidavit, and I will permit her to read it and see if it does refresh her memory. After she reads it, she can say whether it does or not.

Mr. Thomas: Very well, your Honor.

The Witness: You want me to read the whole thing?

Mr. Bamford: Just the first paragraph. Read the part that deals with Mr. Justice's authority in the plant.

Trial Examiner Downing: Does it refresh your memory?

The Witness: Yes, sir.

Trial Examiner Downing: Now that your memory is refreshed, do you wish to make any change in your testimony as to Justice's power to hire or fire employees?

Mr. Bamford: Or effectively recommend same.

Trial Examiner Downing: Or effectively recommend the hiring or firing.

The Witness: He can recommend, I presume.

Q. (By Mr. Bamford): That is, his recommendation would be effective?

A. Yes, he can recommend.

(Testimony of Louise Mosesian.)

Trial Examiner Downing: What was the next question?

Q. (By Mr. Bamford): And would that recommendation be effective?

A. It would depend upon what mother would say. [363]

Trial Examiner Downing: Would they be listened to? Would they be given weight?

The Witness: Yes, sir, I suppose they would be, sure. [364]

\* \* \*

### Redirect Examination

By Mr. Thomas:

Q. Would the same recommendation of Harry Ekzoozian on Eddie Ejadian be followed?

A. Yes. My mother listens to what Justice has to say. We get together and talk it over.

Q. I didn't say Justice. I said that suppose Harry Ekzoozian had recommended to you that somebody was not performing their job. Would your mother listen to him?

A. Oh, no. You mean listen to Harry Ekzoozian?

Q. Yes. A. My mother?

Q. Yes? A. No.

Q. Would she consider what he had to say in the same light that Mr. Justice had to say?

A. No. [365]

\* \* \*



## MARY MOSESIAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

## Direct Examination

\* \* \*

By Mr. Thomas:

Q. Who does the hiring and firing of your men in the warehouse?

A. Mother, Mrs. Mosesian. [369]

\* \* \*

Q. (By Mr. Thomas): Did you ever discuss the Union with Machoian, either individually or as a group?

A. It was either the day before the day of the election or [375] the day of the election.

Q. Who was present?

A. He and Harry were working together that one day, and Eddie and Bob, they were in another place. I went along and I told the boys, "Today is election day in the afternoon. Yes was in favor of the union, No was in favor of the warehouse, non-union. They could vote as they pleased, as they saw fit."

\* \* \*

Q. Did anyone ever complain to you about Moses Machoian's work in the warehouse?

A. Yes, sir.

Q. Was anyone else present when this—who complained to you?

(Testimony of Mary Mosesian.)

Mr. Bamford: Objection.

Mr. Thomas: Do you want me to ask when it occurred?

Mr. Bamford: Irrelevancy.

Trial Examiner Downing: Overruled.

Q. (By Mr. Thomas): Who complained to you about Moses Machoian's work?

A. Mr. Thomas, I will have to explain how I go about it, [376] first.

Trial Examiner Downing: Can't you say who complained?

The Witness: Eddie.

Trial Examiner Downing: He will get on to the rest of the situation, if you will answer the questions that are put to you. Now, who complained?

Mr. Bamford: Mr. Examiner, may I have a continuing objection to this line of questioning?

Trial Examiner Downing: Let's get this question over, first. Who complained?

The Witness: Nobody complained. I asked about it.

Trial Examiner Downing: Proceed, Mr. Thomas.

Q. (By Mr. Thomas): Who did you ask?

A. Eddie Ejadian was the first one I asked.

Q. What did you ask him?

A. How the new man is coming on the job.

Q. When did you ask this?

A. Oh, he was there about a month or so later.

Mr. Bamford: Mr. Examiner, may I now have my continuing objection?

(Testimony of Mary Mosesian.)

Trial Examiner Downing: Yes, let the record show a continuing objection by the General Counsel.

Mr. Thomas: Shall I proceed, Your Honor?

Trial Examiner Downing: Yes.

Q. (By Mr. Thomas): What did Eddie say to you in response [377] to your question?

A. He says, "He is all right but he doesn't do his share of the work."

Trial Examiner Downing: This is Eddie Ejdian now, you are speaking of?

Mr. Thomas: Yes.

Q. Did he tell you in what way he didn't do his share of the work.

A. He said when he was pulling the truck, he had to use all his energy and Mr. Machoian would just put his hand on the truck for one thing, and another time he said, "When we go to pick up the sacks, he makes me do all the lifting and he kind of does a little boosting and that is about all."

Q. Did you ask anybody else about Moses Machoian?

A. A few days later, I asked Harry Ekzoozian.

Q. You say that this occurred about a month after Machoian's employment with you?

A. Yes, sir.

Q. That would be about the middle of December?

A. Middle of December or last of December, right around in there sometime.

Q. What did Mr. Ekzoozian say?

A. Mr. Ekzoozian says, "The man is doing all

(Testimony of Mary Mosesian.)

he can. He has got a weak back. He has no strength in his one arm on account of his finger." He says, "I am doing most of the [378] work. Of course, I got the job for the man. I can't say too much about him."

Q. Did you tell your mother what Mr. Eddie Ejadian said? A. I did.

Q. Did you tell your mother what Harry Ekzoozian said? A. I did.

Q. What did your mother say?

A. "I will see about it."

Trial Examiner Downing: This was in December?

The Witness: Yes, the latter part of December or middle of December, somewhere around there.

Q. (By Mr. Thomas): Were you in the warehouse on April 12, 1949?

A. I am pretty sure I was there.

Q. That is the day he was fired, Mr. Machoian was fired. A. Yes, I was there that day.

Q. You were there the day Mr. Machoian was fired? A. Yes, I was there.

Q. Where were you working?

A. Mostly in the front office in our side of the building.

Q. Did anything happen? Do you recall the events that occurred on that day?

A. Mother came into the warehouse—

Q. Wait a minute. Just answer the question.

Trial Examiner Downing: The question is, do

(Testimony of Mary Mosesian.)

you recall [379] and the answer to that will be yes or no.

The Witness: Yes.

Trial Examiner Downing: Don't get ahead of him.

Q. (By Mr. Thomas): Will you please tell the Court in your own words what happened that day in connection with Mr. Machoian and your mother.

A. Mother went out to the warehouse and a little bit——

Q. When? A. In the morning.

Trial Examiner Downing: Now, don't testify to something you don't know of your own knowledge. Testify to what you saw.

The Witness: Well, she came back and told me about it.

Trial Examiner Downing: Don't testify to what she told you. You are asked to testify what you know of your own knowledge. Your mother will testify and she can speak of her own knowledge.

The Witness: It is hearsay on my part, then.

Q. (By Mr. Thomas): Did your mother come into the office in the morning? A. Yes, sir.

Q. Did she come in through the warehouse door?

A. No, she came through the side door, the back door of the west side.

Q. What did she say? [380]

A. She said, "I saw Moses Machoian smoking."

Q. Was she angry or happy? A. Angry.

Mr. Bamford: Mr. Examiner, I move the preceding two questions be stricken as hearsay.



(Testimony of Mary Mosesian.)

Mr. Thomas: If your Honor please, it is not hearsay. It is direct testimony as to what happened on the day that Moses Machoian was fired. It is all part of the *res gestae*. It is all part of the events.

Trial Examiner Downing: How closely connected is it to the time of the firing?

Mr. Thomas: Well, the firing took place at five o'clock that afternoon.

Trial Examiner Downing: And this was what time?

Mr. Thomas: It was the first time, in the morning.

Trial Examiner Downing: I will overrule the objection.

Mr. Thomas: Will you read the last question? Did the witness answer the last question, Mr. Reporter?

(Last question and answer read.)

Q. (By Mr. Thomas): Did anything else happen that day, that you saw or heard?

A. In the afternoon.

Q. What happened?

A. She came back in the afternoon.

Q. Who is "she"? [381]

A. Mother came back in the building, in the office, rather, and she says, "Well, that draws the straw. Mose is smoking again this afternoon."

Mr. Bamford: Again I object and move that that answer be stricken as hearsay, if it is offered to

(Testimony of Mary Mosesian.)

prove Machoian was smoking in the warehouse on that day.

Trial Examiner Downing: Objection overruled.

Q. (By Mr. Thomas): About what time did that occur? A. Right around four o'clock.

Q. Did anything else happen that afternoon?

A. She came in there and sat in the office and the more she thought about it, the madder she got. I could see the expression on her face.

Mr. Thomas: That is a conclusion. Pardon me.

Mr. Bamford: I don't mind.

Trial Examiner Downing: You don't object?

Mr. Bamford: No, sir.

Trial Examiner Downing: It will remain in the record then.

Q. (By Mr. Thomas): Anything else happen that afternoon?

A. She was going to fire him.

Q. Tell us what happened.

A. She sent one of the girls after him to tell him to come to the office.

Trial Examiner Downing: Which one did she send? [382] A. Violet Misikian.

Trial Examiner Downing: What is her job?

The Witness: She works in the office right along with us.

Trial Examiner Downing: She is one of the office girls?

The Witness: One of the office girls.

Q. (By Mr. Thomas): Did anything else hap-

(Testimony of Mary Mosesian.)

pen that day? What happened at five o'clock?  
Did Mr. Machoian come into the office?

A. He did not.

Q. Tell the Court what happened.

A. Well, all the boys were going out, and mother saw Mose Machoian going out and she followed him out.

Q. And you saw her talking to him on the platform?

Mr. Bamford: Objection.

Mr. Thomas: I am sorry.

Q. Did your mother talk to Mr. Machoian that afternoon?

A. She must have talked to him, going out after him.

Mr. Bamford: Objection.

The Witness: Well——

Trial Examiner Downing: Just a moment. Testify only to what you saw.

Q. (By Mr. Thomas): Did you see your mother talking to Moses Machoian? A. Yes. [383]

Trial Examiner Downing: Did you hear the conversation?

The Witness: No, sir.

Q. (By Mr. Thomas): But you saw your mother talk to Moses Machoian?

A. We saw her stop Mose.

Q. Don't say "we."

A. I saw her stop Mose and talk to him.

Q. Saw her? A. Saw her. [384]

(Testimony of Mary Mosesian.)

Q. (By Mr. Thomas): Will you please tell the Court what your mother said, Mary, after she came back into the office from off the platform?

A. She said, "I fired Mose Machoian."

Q. Did she say why she had fired him?

A. Yes.

Q. Tell the Court what she said.

A. "I fired Mose Machoian, because he was smoking in the warehouse. He smoked twice today and I am just fed up with him."

Q. Did she say anything else?

A. I don't know. We talked about different things.

Q. I mean about Machoian.

A. No, not very much after that. [389]

### Cross-Examination

By Trial Examiner Downing:

Q. Have you ever seen anyone smoke in the warehouse?

The Witness: We fired one man on that account before Machoian.

Trial Examiner Downing: Other than that, have you ever seen anyone smoke in the warehouse?

The Witness: Inside? No.

Q. (By Mr. Bamford): When did this discharge take place that you just mentioned, Miss Mosesian?

A. Well, the payroll would show that.

Q. What year? Do you remember what year it

(Testimony of Mary Mosesian.)

was? Was it before the war? A. No, no.

Q. During the war?

A. It was a little before Machoian came to work.

Q. How much before?

A. I can't remember that.

Q. What was the man's name?

A. Bob Mirikian.

Q. That wasn't the man that was found drinking? [398] A. No.

Q. What was his name?

A. Mirikian.

Q. Could you spell it for me, please?

A. M-i-r-i-k-i-a-n. [399]

\* \* \*

Q. Now, I believe you said that both Ejadian and Ekzoozian spoke to you about a month after Machoian came to work and told you, in effect, that Machoian wasn't doing quite his share of the work, is that correct?

A. They didn't voluntarily tell me. I inquired. I asked about all new employees that come to the warehouse. He is not the only one.

Q. And they said that he wasn't pulling his own share, is that correct? A. Yes, sir.

Q. Is that the only occasion that you received such a report?

A. Well, the reason why I did that was because every now and then I like to take a report to my mother. [402]

\* \* \*



(Testimony of Mary Mosesian.)

Q. (By Mr. Bamford): In other words, that day you didn't see your mother go into the warehouse? You just saw her come in, after she had been in the warehouse, is that correct?

A. Yes.

Q. And she said that she had seen Machoian smoking, is that correct? A. Yes, sir.

Q. And she appeared angry, is that correct?

A. Yes, sir.

Q. Do you remember what her exact words were, Miss Mosesian? [409] A. I can't.

Q. Can you give the substance?

A. That Mose Machoian was smoking. I remember that part of it.

Q. Then I think you have testified also that during the afternoon she said that she caught Mr. Machoian smoking again, is that correct?

A. Yes.

Q. Was that one of these little tours around her garden? Was she following one of these little tours around her garden, that she came back and said that, or did she go out into the warehouse specifically? A. I don't remember.

Q. All you remember is that your mother caught him again? A. Yes.

Q. And that she again appeared angry, is that correct? A. Yes.

Q. And then you said, I think also, that she sent Violet Misikian, is that correct? A. Yes, sir.

Q. Into the warehouse?

A. Violet Misikian—your Honor, I will have to

(Testimony of Mary Mosesian.)

do a little more explaining again.

Trial Examiner Downing: You have been asked if you testified that she sent Violet Misikian into the warehouse. [410]

The Witness: Yes.

Trial Examiner Downing: Did you testify to that?

The Witness: Yes. She went out into the building.

Trial Examiner Downing: You were just asked if your mother sent her into the warehouse. You have answered that.

The Witness: I will have to explain how that came about.

Trial Examiner Downing: You are not being asked to explain how that came about. You are just being asked if it happened.

The Witness: I didn't hear mother telling her to go out into the warehouse.

Q. (By Mr. Bamford): In other words, you don't know if your mother sent Violet out?

A. No.

Q. Yes, and you didn't see Violet go into the warehouse, did you? A. I did.

Q. You saw her? A. Yes.

Q. But you don't know whether your mother sent her out?

A. No. She went right by my office.

Q. And did she return? A. She did. [411]

## VIOLET MISIKIAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

## Direct Examination

\* \* \*

By Mr. Thomas:

Q. Did Mrs. Mosesian come into your office that day? A. Yes. She came in several times.

Q. Did you hear her complain about any employees on that day?

A. Well, it was about four o'clock——

Q. Answer the question. A. Yes.

Q. Who? A. Mose Machoian.

Q. Do you personally know Mose Machoian?

A. I know who he is.

Q. Tell us in your own words what happened on that day in connection with Mrs. Mosesian and Mose Machoian?

A. Well, I was making my payrolls and pay checks and, all of a sudden, Mrs. Mosesian came in from the back to my office, very angry and agitated, and she started talking, and I asked her what was wrong, and she says, "Well, I saw Mose Machoian smoking." She says, "I have told the employees many and many a time not to smoke in the warehouse proper." And then she went in and told the girls, Mary and Louise.

Q. Did she speak in Armenian?

A. Yes.

Q. Do you understand Armenian? [415]

(Testimony of Violet Misikian.)

A. I do.

Q. Did anything else happen that day?

A. Well, again in the afternoon she came in to sign some more checks, into the warehouse, and she went out into the warehouse again and came in again very mad and talking and she told the girls, "Well, I saw Mose Machoian smoking again," and, she says, "I will have to discharge him."

Q. Did you see her go into the warehouse?

A. Yes, I did.

Q. Did she go in through your door?

A. Yes. She usually does. She asked me if she has any checks to sign, and then she went through the back.

Q. Do you recall about what time that was, when she went into the warehouse?

A. I should say about 3:30 or 4:00 o'clock.

Q. Did anything else happen?

A. Well, the only recollection I have is that she came back and told me to go back into the warehouse and see Mose Machoian and tell him to come back into the office before going home.

Q. Did you go to see Mose Machoian?

A. Yes. I went through the offices and into the warehouse, proper to see where the men were working, and I went to the box car and Harry Ekzoozian and Mose Machoian were working together, loading a box car. [416]

Q. What did you tell Mose Machoian?

A. I told him to come into the office, when he got his pay check, that Mrs. Mosesian wanted to see him.

(Testimony of Violet Misikian.)

Q. Did he say anything?

A. Not that I remember.

Q. Did you see Mose Machoian come into the office?

A. No, I did not. The only recollection I have——

Q. Answer the question.

A. No.

\* \* \*

Q. Did anything else happen that day between Mrs. Mosesian and Machoian? [417]

A. Well, towards evening, closing time, I was getting my work up to date and she was sitting, waiting for Mr. Machoian to come in, and all I remember is that she went out of the building after him. She went out of the door to the platform, and I don't know what she did. She went after Mr. Machoian.

Q. How do you know she went after Mr. Machoian?

A. She said, "He didn't come in. There he goes. I am going after him." So she left.

Q. Did you hear what she said to Mr. Machoian?

A. No, I did not.

Q. Did she return to the office after—pardon me. Did you see her talking to Mose Machoian?

A. No, I did not. [418]

\* \* \*

Q. Who employed you, Miss Misikian?

A. Mrs. Mosesian.

Q. When you came to work in the warehouse, did she mention smoking at all to you?



(Testimony of Violet Misikian.)

A. Yes, she did.

Q. What did she tell you? [421]

A. She said smoking was prohibited in the warehouse, that if we ever did smoke to go in the rest rooms and smoke.

Q. That is, you office girls? A. Yes.

Cross-Examination

\* \* \*

By Mr. Siciliano:

Q. Now, you say that you heard Mrs. Mosesian, the old lady, complain about Mose the first time. What time was that?

A. Well, I would say before noon.

Q. Before noon. And what were you doing?

A. I was making payroll checks. [423]

\* \* \*

Q. (Continuing): —on April 12th, when Mrs. Mosesian came into [424] see you, what did she come in for that time?

A. That time she had been in the back of the warehouse again, and then she came in and she said she caught Mose Machoian smoking and for me to go and tell him to come into the office proper, that she wanted to see him before he went home.

\* \* \*

Q. And the second time, she asked you to give the message to Mose?

A. Yes. She came in very agitated and told me to tell him to come in before he went home. [425]

\* \* \*

## HARRY EKZOOZIAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

## Direct Examination

\* \* \*

By Mr. Thomas:

Q. When you came back from working for the Government, who did you talk to about a job at the warehouse? A. To Mrs. Mosesian.

Q. She is your boss at the warehouse?

A. Yes, sir.

Q. If you want anything, you talk to her?

A. Yes, sir.

Q. She hired you? A. She hired me.

Q. Did she tell you anything about smoking, when she hired you? A. Yes, sir.

Q. What did she say?

A. She said, "Be careful. Don't smoke in warehouse."

Q. Has she always told this to you?

A. Yes, sir.

Q. When you worked there before? [441]

A. Yes, sir.

Q. Are there any "No Smoking" signs in the warehouse, Harry?

A. Yes, sir, a few places over there.

Mr. Bamford: May I have that answer?

Trial Examiner Downing: A few places over there.

Mr. Bamford: Thank you.

(Testimony of Harry Ekzoozian.)

Q. (By Mr. Thomas): Do you know where they are?      A. In No. 1 section and——

Q. That is the north section?

A. The north section and then on the second section.

Q. Where are the signs in the No. 1 section?

A. Right on the posts over there. It says, "Be careful. No smoking."

Q. Do you smoke, Harry?

A. Yes.

Q. Where do you do your smoking?

A. On the platform, smoke outside.

Q. Have you ever smoked inside?

A. No. [442]

\* \* \*

Trial Examiner Downing: You were asked about whether the other men smoked, and you said they did. Then you were asked if they smoke inside the warehouse. Do they? Do other men down there working with you smoke in the warehouse?

The Witness: Yes, sir.

Trial Examiner Downing: How many of them do?

The Witness: I just see one smoking. That is my partner. Just once.

Trial Examiner Downing: Just one.

Q. (By Mr. Thomas): When you were working in the warehouse, who did you work with, Harry?

A. Mr. Machoian.

Q. He was your partner?

A. Yes, sir.

(Testimony of Harry Ekzoozian.)

Q. Have you ever seen Mr. Justice smoke in the warehouse?

A. Well, I always see a pipe in his mouth, but I don't know if he smokes or not. [443]

Trial Examiner Downing: You don't know whether it was lit?

The Witness: I don't know exactly.

Trial Examiner Downing: He just carries it around in his mouth?

The Witness: Yes.

Trial Examiner Downing: Does he ever have a cigar in his mouth?

The Witness: I don't see him.

Trial Examiner Downing: Does he ever have a cigarette in his mouth?

The Witness: No, no cigarette, always just a pipe in his mouth.

Q. (By Mr. Thomas): How long have you known Moses Machoian?

A. About twenty years.

Q. Did he ask you to help him get a job at the warehouse?

A. Yes, sir.

Q. Did you help him get a job?

A. Yes, sir.

Q. How did you help him to get a job? What did you do? Did you take him to see Mrs. Mosesian?

A. I took him to Mrs. Mosesian's house, his wife and my wife.

Q. Was anybody else over there?

A. Louise was over there and Mrs. Mosesian was over there.

(Testimony of Harry Ekzoozian.)

Q. Now, would you tell the Court in your own words what Mrs. [444] Mosesian said to Mr. Machoian when she hired him?

A. Well, I asked her for him for a job, and she said, "O.K. Come down tomorrow." So Friday night we go over there and Mose says, "I can't come down tomorrow. I can come down Monday." Then he wanted to go to the cannery to give notice over there before coming down and start to work over there.

Q. Did Mrs. Mosesian say anything about smoking, when she hired him?

A. She says, "When you come down, Mose, be careful. No smoking in the building. I told everybody in the warehouse and I am going to tell you the same way, too." [445]

\* \* \*

Q. Mose Machoian worked with you most of the time, Harry?      A. Yes, sir.

Q. Did he work with anyone else there in the warehouse?

A. Sometimes a change of partner.

Q. Would you say that he spent practically all of his time with you?      A. All with me.

Q. Did Mose Machoian smoke?

A. Yes, sir.

Q. Did you see him smoke?      A. Yes, sir.

Q. Where did you see him smoke? [446]

A. I seen him smoke at the warehouse.



(Testimony of Harry Ekzoozian.)

Q. Did you see him smoke a cigarette or a pipe or what?      A. Just cigarettes.

\* \* \*

Q. (By Mr. Thomas): Did you ever mention to Mose Machoian—did you ever talk to Mose Machoian about his smoking?      A. Yes, sir.

Q. What did you say to him?

A. I told him, I said, "Be careful. Don't smoke in the warehouse." Not only Mose, I told everybody. [447]

\* \* \*

The Witness: Me and Mose worked together, and I went to the toilet, and when I go to the toilet, then I came back after five or ten minutes and I see the old lady standing up on the other side. When she saw me, she said, "Harry, come over here. Did you see Machoian smoking over here?" She said, "Do you see Machoian smoking?" and I didn't say nothing, because she see him herself.

Trial Examiner Downing: Did you see him?

The Witness: Yes.

Trial Examiner Downing: Was he smoking?

The Witness: Yes.

Trial Examiner Downing: Where was he?

The Witness: In the Section number two.

Trial Examiner Downing: That is the middle section?

The Witness: Yes, where they stack up the rice. I went over to the toilet, and he await for me. [449]

\* \* \*

(Testimony of Harry Ekzoozian.)

Q. Did Mrs. Mosesian say anything to Mose Machoian at that time?

A. Yes, sir. She said, "I told you how many times don't smoke in the warehouse. I'm afraid you will make a fire some day around here."

Trial Examiner Downing: What did Mose do?

The Witness: Well, Mose he just threw the cigarette on the floor and stamped it. [450]

\* \* \*

Trial Examiner Downing: Now tell us which is right.

The Witness: Well, he smoked once in the morning and once in the afternoon.

Trial Examiner Downing: The same day?

The Witness: Same day, yes. I remember now, and the old lady came down and she said, "I told you a lot of times don't smoke here." [451]

\* \* \*

Q. Will you tell the Court what happened when Mrs. Mosesian came up and what she said about the smoking in the afternoon.

A. The afternoon? She said, "I told you a lot of times no smoking, Mose. Mose, I get sick and tired. I am afraid you are going to make a fire in this building." [454]

\* \* \*

Trial Examiner Downing: He is asking you about that same afternoon now, after Mrs. Mosesian was there and talked to you and Mose. Did anyone

(Testimony of Harry Ekzoozian.)

else come from the office that afternoon to talk to Mose?

The Witness: In the afternoon? Violet came down. She said the old lady went to see——

Q. (By Mr. Thomas): Wait a minute. Did you hear what Violet said to Mose?

A. What?

Trial Examiner Downing: Did you hear it?

The Witness: No.

Trial Examiner Downing: How do you know what she said?

The Witness: She said, "The old lady wants to see Mose."

Trial Examiner Downing: Did you hear her say that or not?

The Witness: I heard it, because I was there on the—— [455]

Trial Examiner Downing: Well, you did hear it then?

The Witness: I was there. I hear it all right. That is all I know.

Q. (By Mr. Thomas): What did she say, Harry?

A. She come down and she tell Mose, "Mrs. Mosesian wants to see you tonight before you go home."

Q. Did Mose say anything to you about it?

A. No. [456]

\* \* \*

Q. Where were you going?

(Testimony of Harry Ekzoozian.)

A. His daughter was over there, waiting for us.  
Trial Examiner Downing: Who?

The Witness: His daughter. She always wait for him nights. She take him home morning and nights.

Q. (By Mr. Thomas): Mose's daughter was waiting for you? A. Yes.

\* \* \*

Q. Did you hear Mrs. Mosesian call "Mose"?

A. She hollered. I looked back and I see them speak together.

Q. Did you stop?

A. No, I kept on going. I went right beside the car. [457]

Q. Then you got in the rear seat of the car?

A. Yes, and then Mose and Mrs. Mosesian talked together.

Q. For how long?

A. Four or five minutes.

Q. Then did Mose come down into the car?

A. Yes, came down into the car.

Q. Did he say anything?

A. Well, I just said, "Mose, what did she say?" and the first time, he said nothing. Then after, later on, he said, "You know, Harry, what she say? She said, 'Don't come down to work tomorrow.'"

Q. Did he tell you why she said that?

A. For smoking.

Q. Did he say that? Did Mose Machoian say that?

(Testimony of Harry Ekzoozian.)

A. No, Mose Machoian said nothing to me.

Trial Examiner Downing: You asked why did she say that?

The Witness: He said she said, "Don't come down to work tomorrow."

Trial Examiner Downing: What else did he say about it? Anything?

The Witness: No.

Q. (By Mr. Thomas): He told you that while he was driving you or his daughter was driving you home?

A. Yes, sir. [458]

\* \* \*

Q. (By Mr. Thomas): Did Louise ever talk to Mose about his singing or dancing?

A. Yes. [459]

\* \* \*

Q. Did Louise talk to Mose? Do you remember what Louise said to Mose?

A. Well, Louise said, "This is not a dancing room. You come down here for work, not for dancing."

Trial Examiner Downing: Did you hear what she said?

The Witness: Yes, that is all she said. [460]

\* \* \*

Q. (By Mr. Thomas): Did Mary ever talk to you about the Union?

A. No, sir, no.

Q. Did Louise ever talk to you about the Union?

A. No.



(Testimony of Harry Ekzoozian.)

Q. Did Mrs. Mosesian ever talk to you about the Union?      A. No.

Q. When did you first know about the Union?

A. When I see the election, when I see the sign over there. [464]

Q. For the election?

A. When they hang up the sign over there, then I notice.

Q. That is the first time you heard about it?

A. That is the first time I heard about it.

Q. Did Mary ever talk to you and Mose about the election?

A. That is the election time, and Mary says, "Well, Mose and Harry," she says, "now it will be the election and that is up to you." She says, "Yes, that is the Union; no, the warehouse. That is up to you fellows."

Q. Did you ever talk to Mary about Mose's finger?      A. Mose's finger?

Q. Yes.      A. Yes, sir.

Q. What did you tell her?

A. I said that he got a smashed finger and he can't throw the sack high, like when he take one side and I take the other side, he can't lift it, and everything is heavier on my side.

Trial Examiner Downing: Would you mind fixing the time and the place.

Q. (By Mr. Thomas): Do you remember when you talked to Mary? Where was Mary, when she talked to you?

(Testimony of Harry Ekzoozian.)

A. In the warehouse, but I don't remember what place.

Q. Do you remember when it was?

A. No, I don't remember that either.

Trial Examiner Downing: How long after Mose came to work [465] there?

The Witness: About two weeks.

Trial Examiner Downing: Two weeks after he came to work there?

The Witness: Yes. [466]

\* \* \*

Q. Did Louise Mosesian ever talk to you and Bob and Mose and Eddie in a box car?

A. Box car?

Q. Yes. A. Yes, sir.

Q. Do you remember when she talked to you?

A. Yes, sir.

Q. When? About when was it?

A. I don't remember the date but she came down to the box car and told the boys, "Step on it," she says.

Q. Did she tell Mose or all of you?

A. All of us.

Trial Examiner Downing: Where?

The Witness: In the box car.

Trial Examiner Downing: What did she tell you?

The Witness: She told the boys, "Step on it."

Trial Examiner Downing: Step in it? [467]

The Witness: Work fast. She said, "A couple

(Testimony of Harry Ekzoozian.)

of hours you should unload a car, four or five guys can't finish the car in one day."

Q. (By Mr. Thomas): Why did Louise come to say that? A. She always comes down.

Q. She came down?

A. She always comes down.

Q. Why do you remember this particular box car?

A. Well, because the whole bunch was over there.

Q. All of you were there together?

A. All of us were together.

Q. Was anything going on at that time?

A. No. We just talked together. The boys were standing over there, smoking and chewing the rag, and then she saw them and then she came down right there.

Q. Were you talking, arguing, at that time?

A. No argument, just general talk.

Trial Examiner Downing: Were you inside the box car?

The Witness: Inside the box car, your Honor.

Q. (By Mr. Thomas): Did Louise at this time ever mention the Union? A. No.

Q. Did she mention Mr. Sohigian?

A. No.

Q. Did she ever mention Mr. Sohigian to the group? [468] A. No.

Q. Wait until I finish. Did she ever mention Mr. Sohigian to the group of you? A. No.

(Testimony of Harry Ekzoozian.)

Q. She never talked to you about Mr. Sohigian?

A. No.

Q. Did you have an argument with Mose about Mr. Sohigian?      A. Yes, sir.

Q. When was that?

A. That is the same day, the same day, with Mose.

Q. Was this before——

Trial Examiner Downing: Which day? Let's find out which day it is.

Mr. Thomas: I didn't hear, your Honor.

Trial Examiner Downing: He said the same day, but I am not sure of what he is talking about. The same day as what?

The Witness: About three or four days. I do not remember what day. It was in the car. Me and Mose worked together, and Bob was there. I told him—I don't remember. It was just general talk. I said, "Mr. Sohigian is at Mrs. Mosesian's house."

Trial Examiner Downing: I don't understand that.

Mr. Thomas: He said that Mr. Sohigian was at Mrs. Mosesian's house.

The Witness: Machoian said, "No." [469]

I said, "Yesterday I saw him."

He said, "You are a liar." He said, "I will bet you anything he is not here. He is out of town, Mr. Sohigian," Moses says.

I said, "No, Moses, he is around here."

Then he called me a liar and he said, "You don't tell the truth. You are a spy."

(Testimony of Harry Ekzoozian.)

Then I told Mose, "Take your words back."

Just common talk, your Honor, no fight, just arguments.

Then he says, when I make him believe then that Sohigian was at the Mosesian's house last night, and he believed and calmed down, he said, "Why don't you tell me before, Harry?"

I said, "I told you but you do not believe me."

Then we were good friends and then we worked together three months after that argument, and he always take me home in the morning and at night.

Trial Examiner Downing: You worked together three months after that argument?

The Witness: Yes, your Honor.

Trial Examiner Downing: And that is the only time that you and Mose talked about Sohigian?

The Witness: Yes, and he gave me rides morning and night, and we were good friends. I go to his house and he come to my house.

Q. (By Mr. Thomas): Did Louise come into the box car while [470] you were working?

A. Yes, she came down and she said, "What are you hollering for, you fellows? What are you arguing about?" And we answered, "Nothing," and she left. [471]

\* \* \*



(Testimony of Harry Ekzoozian.)

Cross-Examination

By Mr. Siciliano:

Q. Now, at the warehouse you say there are signs?      A. Yes, sir.

Q. Where are these signs?

A. There is a sign in the first section, right on the post, and the second section, and in the middle room.

Q. Are these signs in the second section on the post?      A. Yes.

Q. Are there any other signs that you have ever seen there?

A. Well, I seen them upstairs, too, but somebody throw down.

Q. Somebody threw down the signs upstairs? Are they on the post?

A. Hanging up on paper.

Q. Now, at the time that you were working there with Mr. Machoian, were these signs that were hanging up, there, too?      A. Yes, sir. [475]

Q. Did you ever see them?      A. Yes, sir.

Q. Did you ever know who pulled them down?

A. No, I don't know that.

\* \* \*

Q. Now, with regard to smoking of Mr. Justice, you say he had a pipe in his mouth?

A. That is right.

Q. Did you ever see him have any matches?

A. I never saw him. I see a pipe always in his mouth.

(Testimony of Harry Ekzoozian.)

Q. Outside of the warehouse? [476]

A. Inside the warehouse.

Q. No. When he is outside of the warehouse, did you see him smoking out there, outside of the warehouse?

A. Yes, I see him smoking outside the warehouse.

Q. He smokes a pipe outside the warehouse?

A. Outside.

Q. On the platform? A. On the platform.

Q. Does he smoke cigars outside the warehouse?

A. Yes.

Q. Does he have the cigar in his mouth when he comes in to the warehouse?

A. Sometimes.

Q. Have you ever seen him smoking?

A. No.

Q. He just has it in his mouth?

A. Always in his mouth. [477]

\* \* \*

Q. Once in a while do all of you work in a car?

A. We work in a boxcar, yes.

Q. So you work once in a while together?

A. So we have a chance to smoke over there.

Q. You smoke in the car? A. Yes. [480]

Q. Is that all right, when you smoke in the car?

A. Well, no danger.

Q. They don't care when you smoke in the car?

A. They don't say nothing over there.

Q. But you all smoke in the car?

(Testimony of Harry Ekzoozian.)

A. Most always smoke on the platform.

Q. But inside the boxcar it is okay to smoke, inside the boxcar?      A. It is all right.

Q. Everybody smokes inside the boxcar?

A. Everybody smokes over there. There is no danger or anything.

Q. When you are carrying things in and out, it is all right?      A. That is right.

Q. When you are carrying things outside the car, where do you go with the things? Sometimes do you bring them inside the building?

A. The stuff?

Q. Yes.      A. Yes.

Q. You come right from the car to the inside of the building?      A. That is right. [481]

\* \* \*

Q. Now, do you remember when you were all in the boxcar, working one day, and Louise came in and asked you about the Union?

A. No. She came in but she never mentioned no union over there.

Q. Did she ever say to you about who had signed up?      A. No, not there.

Q. Were you there?

A. Maybe I was not there, I say. If I was there, she don't say like that. She just says, "Come on, Bob. Step on it."

Q. Did you come in after she said that?

A. I don't remember that.

Q. Did you come in to the car, after she said that?

(Testimony of Harry Ekzoozian.)

A. I don't know that. When I was there, she came in and said, "Come on, boys, step on it." After that I don't know.

Q. What did she mean, when she said, "Step on it"?

A. She meant, "Hurry up, work fast, keep on going." [497]

\* \* \*

Q. What did Mose say to you, when you were arguing in the boxcar?

A. Well, we were arguing about Sohigian. We argued about Sohigian. We just talked generally, just like friends, and I told him, I said, "Mose, I saw Sohigian last night," and he said, "Where"?

I said, "At the Mosesians' house," and he said, "No, Harry."

And I said, "Yes, I saw him, Mose," and he said, "You are a liar."

And I said, "No, Mose." He said, "I will bet he is not here. He is out of town."

And I said, "No, he is here in town." Then I say, "I saw him right there."

When we got called down, then we forgot altogether everything.

Q. You say that it was a friendly argument?

A. Yes. He says, "I am sorry, Harry, I said that. Why didn't you tell me that before?"

Then after that we were still friends, talking together nice ways just like friendship, you know. He take me home, [500] bring me back in the morning, take me home at night.

(Testimony of Harry Ekzoozian.)

Q. Yes, I see. And Louise came into the boxcar when you were arguing?

A. Yes, she came down hollering. She said, "Why are you hollering, boys? Come on, step on it."

Q. You were hollering?

A. She hollered to us.

Q. I know, but were you hollering too?

A. Me and Mose were just arguing about Sohigian.

Q. But you were hollering, too?

A. Yes, we argued together. [501]

\* \* \*

Q. (By Mr. Siciliano): This morning you said that Harry called you a spy—pardon me—that Mose called you a spy, is that right? A. Yes.

Q. When did he call you a spy?

A. That argument there.

Q. Which argument?

A. That day they were arguing about Sohigian. He said, "How do you know?" He said he worked for Sohigian before and he thinks I told the old lady about how he worked at Mr. Sohigian's, that I told her, and I said, "Mr. Sohigian was right there last night. The whole family was right there."

Q. Had you talked about Mose's working at Sohigian's before that night?

A. About Sohigian being over there at Mrs. Mosesian's house.

Trial Examiner Downing: I don't understand this. Let's [503] start over again.

Mr. Thomas: Wait a minute, Your Honor. I



(Testimony of Harry Ekzoozian.)

don't even know what the question is or what the answer is made to it. Let him ask the question the way the witness can understand.

Trial Examiner Downing: Let's hear the question, please. I think the question was understandable.

Q. (By Mr. Siciliano): Had you talked to Mose about Mr. Sohigian before that night?

A. When I was that night at Mrs. Mosesian's house, he talked about Mose. He says, "Is Mose working over there"? And I said, "Yes, sir."

He says, "He got laid off over there. He don't have any job over there."

Q. Who said this? A. Mr. Sohigian. [504]

\* \* \*

Q. (By Mr. Siciliano): Now, Harry, did you talk to Mose about Mr. Sohigian before this time that you had the quarrel? A. No.

Q. And why did Mr. Sohigian's name come up then, this time?

A. Because Mr. Sohigian said that Mose worked in his plant and broke the die, broke the pipe over there, the die. That is all.

Q. Who did he say this to?

A. Mr. Sohigian told me.

Q. He told you this? A. Yes.

Q. And did you tell Mrs. Mosesian about it?

A. No. I just told Mose that next day.

Q. And Mose accused you of telling Mrs. Mosesian about this?

(Testimony of Harry Ekzoozian.)

A. No. Just we were arguing together and then I told Mose, I said, "I saw Mr. Schogian at Mrs. Mosesian's house last night."

And he said, "What did he say, Harry?" Moses told me like that, and he said, "Did he say anything about the Union?"

I said "No." He said, "What did he say?"

I said, "He just said Mose working over there and just [506] breaking the die and also breaking the pipes, always making damage for the pipe." That is all I said to Mose, nothing else.

Q. You had been to the house of Mrs. Mosesian the night before? A. Yes.

Q. And Mr. Sohigian was there, too?

A. Yes, sir.

Q. And that is when this conversation about Mose came up, the night before at the house of Mrs. Mosesian? A. Yes.

Q. You first talked about Mose that night before? A. Yes.

Q. And Mr. Sohigian talked, too, that time at the house?

A. Yes, about breaking the die and breaking the pipes. That is all he told me.

Q. Were you visiting socially, just a friendly visit? A. No, just once a month.

Q. You had your wife with you? A. Yes.

Q. You would go there about once a month?

A. Yes, sir.

Q. And this particular time that you went there, you found Mr. Sohigian was there, didn't you?

(Testimony of Harry Ekzoozian.)

A. His whole family was there, too. [507]

\* \* \*

Q. What else did you talk about?

A. That is all. We were talking about the church or the weather or business or——

Trial Examiner Downing: Don't go into all of that, please, counsel. It was a social visit. You can ask him about anything relative to the issues, if you wish.

Q. (By Mr. Siciliano): This night when you were at the Mosesian's, was anything else said about Moses? A. No. [508]

\* \* \*

Q. When you left, did Mr. Sohigian stay there or did he go with you? A. He go.

Q. He went when you did?

A. Yes, sir. [509]

\* \* \*

### EDWARD EJADIAN

recalled as a witness by and on behalf of the Respondent, having been previously sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Thomas:

Q. Eddie, when did you first come to work at the State Center Warehouse? Do you remember? [535] How long have you worked there?

A. It is over two years.

(Testimony of Edward Ejadian.)

Q. Who hired you, Eddie? A. Mama.

Q. That is Mrs. Mosesian?

A. Mrs. Mosesian.

Q. When you were hired, did she tell you anything about smoking?

A. She didn't say nothing about that.

Mr. Bamford: I didn't hear the answer, please

The Witness: She didn't say nothing then.

Q. (By Mr. Thomas): Did she tell you when you first came to work, whether or not you could smoke in the warehouse?

A. Later on she told me. She said, "If you guys want to smoke, you will smoke outside." She told me that.

Q. Then you knew that you were not to smoke inside the warehouse? A. That is right.

Q. What would happen if you smoked inside the warehouse? A. There would be damage, fire.

Q. Would anything happen to you?

A. Well——

Q. Would you be fired or would you be kept on and employed? A. I would be fired.

Mr. Bamford: Objection, Mr. Examiner. [536]

\* \* \*

Q. Eddie, when did Mrs. Mosesian first talk to you about smoking?

A. I don't remember that.

Q. Was it right after you started working at the warehouse? A. I suppose so.

Q. Do you know, Eddie?

A. I think after I started working. [537]

(Testimony of Edward Ejadian.)

Q. Right after you started working there?

A. Yes.

Q. And she told you you were not to smoke?

A. She told everybody not to smoke in the warehouse, "If you want to smoke, go outside on the platform and smoke." [538]

\* \* \*

### Cross-Examination

By Mr. Bamford:

Q. Did you ever see Mama Mosesian smoke in in the warehouse? A. I didn't see her.

Q. Did you ever see Mr. Justice smoke in the warehouse? A. Yes. [540]

Q. What would he be smoking?

A. Either a pipe or a cigar.

Q. You could see the smoke come out?

A. Yes.

Mr. Thomas: I object to that, your Honor. There is no foundation laid for it.

Mr. Bamford: On cross-examination, Mr. Thomas?

Trial Examiner Downing: Counsel is on cross-examination. You went into the question of smoking on direct examination.

Mr. Thomas: All right, your Honor.

Q. (By Mr. Bamford): Did Mr. Justice ever speak to you about smoking? A. No. [541]

\* \* \*

Q. (By Mr. Bamford): I will read again:



(Testimony of Edward Ejadian.)

“There were never any no smoking signs in the warehouse until yesterday, Monday, June 27, 1949.”

Now, do you remember Mrs. Phoenix reading that to you?

A. It has been so long, I forgot.

Trial Examiner Downing: Well, do you remember telling her that? Do you? Did you tell her what was written down there, that was just read to you?

The Witness: Yes.

Trial Examiner Downing: Is it true?

The Witness: That is true.

Trial Examiner Downing: Proceed, Mr. Bamford.

Q. (By Mr. Bamford): “For the first time there were about five or six paper signs in the warehouse, saying, ‘No Smoking.’ ”

Do you remember that?

A. Yes, sir.

Q. Do you remember Mrs. Phoenix asking you about smoking signs? A. Yes.

Q. Does this help you remember what you told Mrs. Phoenix? [545]

A. Yes.

Q. And that was true?

A. That is true. That is true.

Mr. Bamford: That is all.

Trial Examiner Downing: Any redirect examination?

Mr. Thomas: Yes, your Honor. [546]

(Testimony of Edward Ejadian.)

Redirect Examination

\* \* \*

By Mr. Thomas:

Q. Eddie, when you were talking here about signs in the warehouse, were you talking about cardboard signs or were you talking about those signs that are up upon the cement posts?

A. Cardboard signs. [549]

\* \* \*

Q. (By Mr. Thomas): How long have the signs on the cement posts been up there, Eddie? Were they there when you came to work?

A. No, after.

Q. Do you know what a stencilled sign is, Eddie?

A. Yes, I know. I know what a stencilled sign is.

Q. It is a sign painted on the post?

A. Yes, it is on the post.

Q. Now, were those put up there after you came to work? A. I can't remember.

Q. Eddie, are you afraid to testify, because you have given this affidavit? Is that what your reason is? Are you afraid of what is going to happen to you?

A. What am I going to be afraid about?

Q. I don't know.

A. I am not afraid about nothing. If I am afraid, I won't come over here to testify.

Q. All right, Eddie.

(Testimony of Edward Ejadian.)

Trial Examiner Downing: Witness, there is nothing to be afraid of.

The Witness: Yes. You are not supposed to be afraid of nothing, just afraid about God. That is the only one you are afraid of.

Trial Examiner Downing: You have sworn an oath here to [551] tell the truth, and that is the only obligation while you are here.

The Witness: If I don't know something, I don't know. [552]

\* \* \*

Q. You have seen a "No smoking" sign on that door? A. Yes. They got them all over.

Q. They have these cardboard signs all over?

A. That is right.

Q. Was that cardboard sign on that door when you came to work? A. No.

Q. It wasn't there? A. No, sir.

Q. Do you remember when one was put there?

A. I don't remember, but later on they put, like I told her and she wrote it. That is the time they put it.

Q. There wasn't any on the door prior to that time? A. No. [554]

\* \* \*

Q. Now, did you mean that you believed the statement was true, when it was written here and you signed it? A. Yes, sir.

Q. When he asked you the question, did you remember the exact statement that you had made, or did you just remember that you had signed this?

(Testimony of Edward Ejadian.)

A. I just remembered that I had signed it.

Q. That is all you remembered about it?

A. Yes.

Q. And when he read it, you did not then remember the things you said? A. No.

Mr. Snell: If the Court please, I would like to move to have the testimony stricken on the ground that it is actually a past recollection recorded attempt rather than the refreshing [557] of his memory.

Trial Examiner Downing: Denied. His testimony was quite clear on cross-examination.

\* \* \*

## ROBERT KRIKORIAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows: [558]

### Direct Examination

\* \* \*

By Mr. Thomas:

Q. When did you come to work for the State Center Warehouse?

A. December of '48, if I am not mistaken.

Q. How long did you work for the [559] warehouse?

A. Three months, about three months.

Q. Who employed you, when you came to work?

A. Mrs. Mosesian.

Q. Where did she employ you?

(Testimony of Robert Krikorian.)

A. I went to her home.

Q. Did she tell you anything about smoking, when you came to work? A. Yes, sir.

Q. What did she tell you about smoking?

A. Well, just told me we are not supposed to smoke at the warehouse.

Q. Did you ever smoke in front of Mrs. Mosesian? A. Not if I could help it.

Q. Did she ever catch you smoking?

A. One time.

Q. What did she do?

A. Reprimanded me. [560]

\* \* \*

Q. Did you ever see Mose Machoian sing or dance in the warehouse? A. Yes, sir.

Q. Do you recall about when that was after your employment?

A. No, I couldn't say possibly.

Q. Was anyone else present at the time?

A. I don't know. I wouldn't say.

Q. Do you remember where he sang or danced in the warehouse? A. In the warehouse.

Q. Just in the warehouse. Was it during working hours? A. Yes.

Q. Did you ever see Mose Machoian smoke in the warehouse? A. Yes, sir.

\* \* \*

Q. Did Louise Mosesian ever talk to the group of warehousemen in a box car where you were working? A. Yes, sir.



(Testimony of Robert Krikorian.)

Q. Do you remember when she talked to you? Let's say you came to work on December 7th. [561]

A. That is pretty close.

Q. About how long after that would you say?

A. Well, I would say about a month and a half. That is pretty close.

Q. According to your payroll records, you left on March 2nd? A. Yes.

Q. Does that help you? Was it a week before you left? A. No.

Q. A month? Two months?

A. Well, it wasn't after February and it wasn't before the 15th of January, so it is in between there. That is my estimation, as close as I can recall it.

Trial Examiner Downing: Was there only one occasion that she came to the box car, when you were there?

The Witness: Only one time that I remember.

Q. (By Mr. Thomas): Who else was present at the time? A. Do you want the names?

Q. Yes.

A. Mose, Eddie, Harry, myself. That is all I know of. That is about all I am pretty sure there was.

Q. Do you remember what was said at the time by Louise? A. Yes.

Q. What did she say?

A. She said—she walked into the box car and she wanted to know if any of the boys had spoken to anybody. [562]

Trial Examiner Downing: About what?

(Testimony of Robert Krikorian.)

The Witness: She didn't say what, sir, and everybody said, "No." And then she asked us individually, did any of us join the union, right around, and we said, "No."

Q. (By Mr. Thomas): How long was she present in the box car?

A. Couldn't have been over ten minutes.

Q. What happened? What did she do, after she had asked you if you had joined the Union?

A. What did she do?

Q. Yes.

A. She turned around and asked Harry, that Mama always kept four or five men working in the warehouse even in tough times, and Harry says, "Yes." And she said something about "Mama could always shut it or rent it out, the warehouse." And I don't know how that came about, because I haven't asked.

Q. Because you what? A. What was that?

Q. You say "because you haven't asked."

A. Because I have been through it already.

Q. What do you mean?

A. With Mr. Bamford.

Q. You mean he interviewed you as a witness?

A. That is right.

Q. Was anything else said at that time, that you remember?

A. No, not that I remember. [563]

Q. Was there any other box car meeting between the warehouse and Louise?

A. Not that I remember.

(Testimony of Robert Krikorian.)

Trial Examiner Downing: Did she say anything about a letter from the Labor Board that she had?

The Witness: No, sir.

Q. (By Mr. Thomas): Do you ever remember Louise mentioning Mr. Sohigian's name?

A. No, sir.

Q. Do you ever remember Mr. Sohigian's name being mentioned by anybody else? A. Yes.

Q. By who? A. By Harry and Mose.

Q. When was that?

A. Well, that is another box car deal but I don't know if it was before or after the other one.

Trial Examiner Downing: How close was it in point of time to it?

The Witness: A few days, sir.

Q. (By Mr. Thomas): And what happened? Do you remember what happened at that deal?

A. I heard Harry and Mose going at it strong and I walked in on them and they were arguing about this here deal, that Harry told Mose that Mike Sohigian said that he had [564] been fired on account of union activities at where he worked before, and they were arguing about it. I mean a lot of it I don't understand, because it was fluently Armenian.

Trial Examiner Downing: You don't speak Armenian?

The Witness: I do, sir, but not that well. [565]

(Testimony of Robert Krikorian.)

Cross-Examination

By Mr. Siciliano:

Q. Now, I would like to ask just a few questions about smoking. You say that you smoked and once were caught by the old lady? A. Yes.

Q. Did you ever see anybody else smoke around in the warehouse? A. Yes, sir.

Q. Who did you see smoke? A. Names?

Q. Yes, names.

A. Eddie, Mose, Harry, myself, and Eccles.

Q. Did you ever see Mr. Justice smoke? This is in the [566] warehouse, I am speaking of.

A. That is right. Yes, sir.

Q. You saw him smoke in the warehouse. Did you ever see Mrs. Mosesian, the old lady, smoke in the warehouse? A. Yes, sir.

Q. Did you ever see Mrs. Mosesian smoke outside of the warehouse? A. Outside?

Q. Yes, around the warehouse, that is.

A. Yes, sir.

Q. What did Mr. Justice smoke?

A. Where?

Q. No. What was it?

A. A pipe or a cigar.

Q. And he smoked inside the warehouse?

A. Yes.

Q. You saw smoke coming out of his mouth?

A. Yes, sir.

Trial Examiner Downing: Who did most of the smoking in the warehouse?

(Testimony of Robert Krikorian.)

The Witness: How do you mean, sir?

Trial Examiner Downing: Well, did any one of those that you named smoke more than the others inside the warehouse?

The Witness: No, sir. I mean I guess the way everybody is taking it is that we just smoked one right after the other, [567] but that isn't so.

Trial Examiner Downing: How was it done?

The Witness: Well, when we weren't outside and we were working inside for a long time, we would take a smoke.

Trial Examiner Downing: You smoked, when you felt like smoking?

The Witness: Yes, sir.

Trial Examiner Downing: You didn't smoke all the time, continuously, of course not?

The Witness: No.

Trial Examiner Downing: Did Mr. Justice ever try to stop you from smoking in the warehouse?

The Witness: He has never said anything to me about it.

Trial Examiner Downing: Did he smoke in front of you inside the warehouse?

The Witness: He smoked all around us.

Q. (By Mr. Siciliano): You said on direct examination that you heard Mose sing. Did you see him dance, too? A. Yes, sir.

Q. Did his singing bother you, when you were working, so that you couldn't work?

A. No.



(Testimony of Robert Krikorian.)

Q. Did you ever sing? A. Yes.

Trial Examiner Downing: While at work? [568]

The Witness: Yes, sir. I work better, when I sing.

Q. (By Mr. Siciliano): Did you sing just fairly loudly; that is, loud enough to hear yourself?

A. Yes. I sang plenty loud.

Q. Would you say that Moses sang very, very loud, as far as you were concerned? Did his singing really bother you, or bother you at all?

A. No, sir.

Trial Examiner Downing: Did he sing louder than you did?

The Witness: Well, I wouldn't say that. I wouldn't be a judge of that.

Trial Examiner Downing: What language did you sing in?

The Witness: Me?

Trial Examiner Downing: Yes.

The Witness: American.

Trial Examiner Downing: Did you sing any Armenian songs?

The Witness: Myself? Just parts of them, what I have heard.

Trial Examiner Downing: Did you sing any Turkish songs?

The Witness: No, sir. I don't know Turkish.

Q. (By Mr. Siciliano): Were you ever reprimanded by Louise for singing?

A. Yes, I was once.

Q. What did she say to you?

(Testimony of Robert Krikorian.)

A. She says, "If you want to sing, go home and sing." [569]

\* \* \*

Q. I would like to go into this box car incident. When you were all in the box car, Louise came in and she asked you about whether anyone had talked to you? That is right, isn't it? [570]

A. That is right.

Q. And then she asked each of you individually, if you had joined the Union?

A. That is right.

Q. Had you joined the Union, when she asked the question? Had you signed cards?

A. I had signed cards.

Q. All right. So that when she asked the question, to your knowledge, had the others, Eddie and Mose, signed cards, too?

A. Yes, sir.

Q. Did the Union officials tell you not to talk?

A. Absolutely.

Q. And when she asked you the question about whether you had seen anybody and about whether you had joined the Union, you said, "No"?

A. That is right.

Q. Did she say to you that she would find out who signed?

A. Yes, sir.

Q. What did she say?

A. She says, "I know who has already signed," she says, "but you don't have to tell me. I am going to find out, anyway."

Q. Now, you mentioned in the second incident with regard to the argument between Mose and

(Testimony of Robert Krikorian.)

Eddie or, rather, Harry, you say that you came up on the argument? They had been arguing, [571] when you came up?

A. That is right. That is the way I recall it.

Q. I realize that. How did it end? Did Harry leave and go away? A. Yes.

Q. What did he say, as he left?

A. He was going to have Mose fired.

Q. And did you see him go away?

A. Yes. He walked away.

Q. In what direction?

A. Toward the office.

Q. You didn't see him go into the office?

A. No, sir, I didn't.

Q. Do you know whether he talked to Louise?

A. No, I don't.

Q. Later that same day did you happen to see Louise? A. Yes, sir.

Q. What did you say to her?

Mr. Thomas: Wait a minute, Your Honor. What has this got to do with the cross-examination? It is beyond the scope of the cross-examination.

Trial Examiner Downing: I believe you developed the incident when Harry and Mose had the argument.

Mr. Thomas: That is right, but we didn't develop anything that happened between this witness and Louise. [572]

Mr. Siciliano: This is a natural subsequence that seems to fit in there.

(Testimony of Robert Krikorian.)

Trial Examiner Downing: I will overrule the objection.

Q. (By Mr. Siciliano): What did you say to Louise, after this argument and after Harry had gone there?

A. Well, don't say that Harry had gone there, because I don't know.

Q. I realize that, but when you saw Harry go in that direction?

A. I asked Louise if she was going to fire Mose, and she said, "No. He is a good worker."

Q. She said, "He is a good worker"?

A. That is right.

Q. And what else did you say to her?

A. That is all. [573]

\* \* \*

Q. Did Louise say anything to you about the election, how to vote, or anything with regard to the election?

A. Well, there was one time that I remember. I mean this is not a special meeting, but we happened to meet each other in the warehouse, and she said, "I know you will vote against the Union," she said, "but how about Eddie?" That is all [574] I remember.

Q. What did you answer?

A. That Eddie would vote the same as I would.

Q. And that was all?

A. That is all I remember.

Trial Examiner Downing: How long was that before you quit?

(Testimony of Robert Krikorian.)

The Witness: About a month, sir.

Trial Examiner Downing: About a month?

The Witness: Yes, sir.

Trial Examiner Downing: At that time did you know that there was going to be an election?

The Witness: Well, I knew that it would be coming up, sir, but I didn't know when. I know that that follows the procedure.

\* \* \*

### Redirect Examination

By Mr. Thomas:

Q. Bob, when you say that all smoked, did they smoke before any of the Mosesians, all your warehousemen? A. No, sir.

Q. They all smoked behind their backs, as I would take it? A. Yes, sir. [575]

\* \* \*

### W. H. JUSTICE

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

### Direct Examination

\* \* \*

By Mr. Thomas:

Q. Do you hire the warehousemen at the warehouse, Mr. Justice? A. I do not.

Q. Do you fire the warehousemen?

A. I do not.

\* \* \*



(Testimony of W. H. Justice.)

Q. What do you do at the warehouse?

A. General operating manager, which consists of office work the same as an office manager, receiving and shipping clerk, loading cars being loaded and shipped out, seeing that the merchandise is placed in the proper place in the warehouse, [577] and seeing that it is stacked properly.

Q. Do the men ever present any complaints to you about their working conditions?

A. They have not.

Trial Examiner Downing: I am a little in the dark as to the relevancy of the line of questioning there as to his duties, in view of the previous concession on the record that this witness was a supervisor.

Mr. Thomas: If your Honor please, the purpose of this line of questioning is to show that Mr. Justice had nothing to do with any of the labor relations in the warehouse, had nothing to do with the smoking in the warehouse, nothing to do with censoring the men in connection with their smoking.

Trial Examiner Downing: Is it still conceded that he is a supervisor within the meaning of the Act?

Mr. Thomas: I think that is a legal conclusion to be drawn from the facts, your Honor.

Trial Examiner Downing: Well, I understood that there was a concession before me on the record. Now, is there or is there not? If there isn't, we have an issue on it then.

Mr. Thomas: I am raising no issue on it.

Trial Examiner Downing: Well, is it conceded

(Testimony of W. H. Justice.)

that he is a supervisor?

Mr. Thomas: I will concede that he is a supervisor.

Trial Examiner Downing: All right. [578]

\* \* \*

Q. Mrs. Mosesian, Louise, and Mary are the ones that contact the warehousemen and tell them what their working conditions are, is that correct?

A. They do the hiring. I have nothing to do with that whatsoever.

Q. Would you have anything to do with whether or not they would smoke in the warehouse?

A. Not necessarily, other than precautionary methods when they were smoking.

Q. Did you ever caution the regular warehousemen not to smoke in the warehouse?

A. I have. [579]

\* \* \*

Q. Did the Mosesians ever tell you about any rule against smoking in the warehouse?

A. They did not.

Trial Examiner Downing: Did you understand from that, that it was proper for you to smoke in the warehouse?

The Witness: I smoked in the warehouse and I wasn't told not to.

Q. (By Mr. Thomas): Where did you smoke in the warehouse, Mr. Justice?

A. It would be in the aisle ways.

Q. Did you ever smoke between the stacks?

A. No.

Q. Did you smoke in the office of the warehouse?

(Testimony of W. H. Justice.)

A. I did.

Q. What do you smoke, Mr. Justice?

A. Either a pipe or a cigar.

Q. Do you walk around with your pipe unlit any part of the time?      A. I do.

Q. You walk around with your cigar unlit any part of the time?      A. I do. [580]

Q. How much of the time would you say, when you go into the warehouse—I withdraw that question.

Would you say that your pipe is usually lit when you go into the warehouse?      A. No.

Q. It is usually unlit?      A. Usually unlit.

Q. Do you generally carry your pipe into the warehouse?      A. I do.

Q. If you do not smoke, you do not take your cigar into the warehouse?

A. Maybe I got your question wrong.

Q. I say, you do not take your cigar out into the warehouse?

A. Yes, I have had my cigar in my mouth in the warehouse, sure.

Trial Examiner Downing: Lit or unlit?

The Witness: Both.

Q. (By Mr. Thomas): Which are they, most of the time?

A. More times unlit than lit.

Q. When you take your pipe out into the warehouse, how do you carry your pipe, Mr. Justice?

A. Generally carry my hand over the bowl this way.

(Testimony of W. H. Justice.)

Q. In other words, the bowl of the pipe is covered?

A. Practically so, yes, sir. That is my natural way of carrying my pipe. [581]

Q. Do you ever caution your itinerant help not to smoke in the warehouse? A. I have.

Q. Do you ever caution the ranch hands not to smoke in the warehouse? A. I have.

Q. This was done purely as a precautionary measure? A. That is right.

Q. Would it be your job or the Mosesians' job to tell the men about whether or not they should smoke in the warehouse?

A. That should be their job.

Q. Well, is it?

A. Well, that hasn't been brought up in my presence, so I wouldn't know.

Q. They have never told you about this rule?

A. No.

Mr. Thomas: That is all.

Trial Examiner Downing: Any cross-examination? [582]

\* \* \*

Trial Examiner Downing: There is one matter I should like to mention, in view of the previous ruling which I made. May I see the exhibits?

Earlier in the case, at the conclusion of the General Counsel's case, the Trial Examiner granted a portion of the Respondent's motion to dismiss two sub sections of the Complaint; namely, Sub Sections IV (1) and IV (2) with the statement that

if the Respondent's evidence laid any foundation for an amendment, the General Counsel would be at liberty to make such an amendment or offer such an amendment.

Now, in that connection, it appeared to the Trial Examiner that the testimony of the witness Bob Krikorian may [583] in some respects have laid a possible foundation for paragraph IV (1) of the Complaint.

Mr. Bamford: General Counsel moves that paragraph IV (1) be reinstated, sir. Thank you, sir.

Trial Examiner Downing: Any objection from the Respondent?

Mr. Thomas: Yes, your Honor. I object to reinstating that IV (1). I don't quite see how Mr. Krikorian's statement there——

Trial Examiner Downing: I am not making any finding at this point. However, there was a portion of his testimony that——

Mr. Thomas: There was one passing statement.

Trial Examiner Downing: That is right. That might possibly support that paragraph. Any objection to the amendment? I am not finding that it is proved or disproved, but in view of my previous ruling I do feel that it is incumbent to call it to the attention of the parties. [584]

\* \* \*

Mr. Thomas: I wish to make on motion at this time, your Honor.

Trial Examiner Downing: Proceed.

Mr. Thomas: I would like to move that the Complaint with regard to the discharge of Moses



Machoian for union activities be dismissed, since there has been absolutely no showing on the part of the General Counsel's office connecting up any union activities with any discharge that has been made here and there has been direct, positive testimony of the reason for which he was discharged.

Trial Examiner Downing: The motion will be denied. [585]

\* \* \*

### TWODI P. MOSESIAN

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

(Whereupon, the witness having been duly sworn through the Interpreter, Aram D. Manuelian, the following questions were propounded in English, translated into Armenian, and answers were given from Armenian into English.) [595]

### Direct Examination

\* \* \*

By Mr. Thomas:

Q. Who hired him?

A. I gave him—I hired him at our porch when Mr. and Mrs. Machoian, Harry and Mrs. Ekzoozian and Louise were present.

\* \* \*

Q. Can you tell the court what was said by you, by the wife, and by Mr. Machoian at the time he was hired relative to his employment?

(Testimony of Twodi P. Mosesian.)

A. I told him that he should not smoke around in the warehouse, it was dangerous, and I repeated it three times.

Q. Did Mr. Machoian say anything?

A. He said that he would not smoke. He promised that [596] he would not smoke.

Q. Did you ever see Machoian smoking in the warehouse?

A. I saw him smoking on several occasions but then I did not think that it would become a matter of litigation.

Q. Did you ever warn him against his smoking?

A. I would tell him, "Moses, do not smoke."

Q. Did Mr. Machoian say anything when you told him not to smoke?

A. He would look—rather stare at me like a statue and wouldn't say anything.

Q. When you warned him, was anyone else present?

A. Harry Ekzoozian.

Q. Who was working with Machoian the day he was fired?

A. Ekzoozian.

\* \* \*

Q. Did you catch Machoian smoking in the warehouse on the morning of that day?

A. Yes. That morning, yes. I took the cigarette away from his hand and crushed it and threw it on the floor, and Harry was present. [597]

Q. Did Machoian say anything?

A. No, he did not say anything—nothing. I told him that if I seen him again it would be the last time, I would have to discharge him.

(Testimony of Twodi P. Mosesian.)

Q. Where did you go after you left Machoian and Harry?

A. I came home and laid down.

Q. Did you go back into the warehouse office first?

A. Yes.

Q. Who was present in the warehouse office?

A. Violet, Louise, Mary and myself.

Q. Did you say anything to them about Machoian?

A. When I went in, Violet asked me, "Momma, why are you angry?" I told her that I saw the man smoking again and it aggravated me.

Q. Did anything else happen in the afternoon of that day?

A. Yes.

Q. Would you please tell the court what happened in the afternoon of that day?

A. I went back to the warehouse. I saw him smoking again. I didn't want to tell him anything for fear he may throw a cigarette around and cause some damage, but then and there I made up my mind that I was going to fire him at the end of the day, and then I said that I didn't want to sustain any damages and have the insurance companies involved in a thing like that. [598]

Trial Examiner Downing: Who said?

Mr. Manuelian: She thought to herself; that is what she thought at the time. [599]

\* \* \*

Q. Now, did you send Violet out to talk to Machoian?

A. She went to call him. He did not come. The

(Testimony of Twodi P. Mosesian.)

workers all were going away, were going out and I walked out and reached him ten feet away from the office.

Q. Was anyone else present when you talked to Machoian?

A. No. Only him and I. The other workers had gone, had left.

Q. What did you tell Machoian?

A. I told him, "You are a dangerous man and I don't want you to be around the place, and because of your smoking, I have to send you away. I have to discharge you."

Q. What did Machoian say?

A. He said he was working there only for a short period of time. [600]

\* \* \*

Q. (By Mr. Thomas): Did you say anything to Violet, Mary or Louise about Machoian?

A. I told them that I had discharged him and they said, "Well, that is your authority or business, that is your job." [601]

\* \* \*

Q. (By Mr. Thomas): While Machoian was in your employ, did you ever talk to anyone about the union?

A. No, never. I have not discussed it with anybody.

Q. Did you ever talk to anyone about the warehousemen joining the union?

A. No, because at no time I knew that they were or were not members of the labor union.

(Testimony of Twodi P. Mosesian.)

Q. Did you know that your men were joining the union?           A. No.

Q. Did you ever talk to your cleaning lady about Eddie joining the union?

Mr. Bamford: May I suggest he be named?

Mr. Thomas: She wouldn't understand. That is why I used the name that way.

Q. (By Mr. Thomas): Did you ever talk to Agnes about Eddie joining the union?           A. No.

Q. Did you ever talk to Agnes about Machoian joining the union?

A. No, no. No such thing was discussed in the house. I don't discuss those things with her, so she can attend to the housework. [603]

\* \* \*

Q. Do you know Michael Sohigian?

A. Yes.

Q. Does he visit at your house?

A. Sometimes he comes as a friend.

Q. Did he ever visit at your house during the time that Machoian was in your employ?

Mr. Manuelian: She did not recall that.

Trial Examiner Downing: I did not hear the answer.

Mr. Manuelian: As a matter of fact, she does not remember.

Q. (By Mr. Thomas): Did Mr. Sohigian and you ever discuss Mr. Machoian?

A. The only thing he told me, that I had a crazy Armenian who was wasting a lot of pipes. I reprimanded—



(Testimony of Twodi P. Mosesian.)

Mr. Manuelian: I didn't get that word, reprimanded [606] him or fired him.

Trial Examiner Downing: Is she quoting Sohigian?

Mr. Manuelian: Yes. [607]

\* \* \*

Cross-Examination

By Mr. Bamford:

Q. At the time Moses Machoian was working for you, did you smoke?

A. I would go around the warehouse and come to the office, [608] smoke in the office and then go out.

Q. But you did not smoke in the warehouse?

A. No. If I smoked, the others would see me smoking; they would do likewise.

Q. Did you ever see Mr. Justice smoke in the warehouse?

Mr. Manuelian: Excuse me. She goes on and rambles.

A. He hauls the pipe in his mouth, but does not smoke, just like a child would have something in his mouth to, you know, chew on it.

Q. (By Mr. Bamford): But she, on no occasion, ever saw Mr. Justice actually smoke a pipe or a cigar in the warehouse?

A. I have not seen him smoke. The cigar he smokes in the office. He has a pipe in his [609] mouth——

\* \* \*

In the United States Court of Appeals  
For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,  
Petitioner,

vs.

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY,  
Respondent.

CERTIFICATE OF THE NATIONAL LABOR  
RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 203.87, Rules and Regulations of the National Labor Relations Board—Series 5, as amended (redesignated Section 102.87, 14 F. R. 78), hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, “In the Matter of State Center Warehouse & Cold Storage Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 431, AFL,” the same being Case No. 20-CA-228, before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Order designating George A. Downing Trial Examiner for the National Labor Relations Board, dated February 14, 1950.

(2) Stenographic transcript of testimony taken before Trial Examiner Downing on February 14, 15, 16, and 25, 1950, together with all exhibits introduced in evidence.

(3) Copy of Trial Examiner Downing's Intermediate Report, dated May 8, 1950 (annexed to item 8 hereof); order transferring case to the Board, dated May 8, 1950, together with affidavit of service and United States Post Office return receipts thereof.

(4) Respondent's exceptions to the Intermediate Report and Recommended Order, dated May 23, 1950.

(5) Respondent's telegram, dated May 24, 1950, requesting extension of time for filing brief.

(6) Copy of Board's telegram, dated May 26, 1950, granting all parties extension of time for filing briefs.

(7) Respondent's request of extension of time to file brief in support of statement of exceptions, received May 29, 1950. (Already granted, see item 6 above.)

(8) Copy of Decision and Order issued by the National Labor Relations Board on August 24, 1950, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 16th day of January, 1951.

[Seal]      /s/ FRANK M. KLEILER,  
Executive Secretary,  
NATIONAL LABOR  
RELATIONS BOARD.

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[Endorsed]: No. 12815. United States Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. State Center Warehouse & Cold Storage Company, Respondent. Transcript of Record. Petition for Enforcement of Order of the National Labor Relations Board.

Filed: January 22, 1951.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

[Title of Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN  
ORDER OF THE NATIONAL LABOR RE-  
LATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. III, Secs. 151, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, State Center Warehouse & Cold Storage Company, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of State Center Warehouse & Cold Storage Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 431, AFL, Case No. 20-CA-228."

In support of this petition the Board respectfully shows:

(1) Respondent is a California corporation engaged in business in the State of California, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with



this Court herein, to which reference is hereby made, the Board on August 24, 1950, duly stated its findings of fact and conclusions of law, and issued an order directed to the Respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

### Order

Upon the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that State Center Warehouse & Cold Storage Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or in any other labor organization of its employees, by discriminatorily discharging or refusing to reinstate any of its employees, or by discriminating in any other manner in regard to their hire and tenure of employment or any term or condition of employment;

(b) Interrogating its employees concerning their union membership or activities or as to voting in the election; threatening its employees with ascertaining who are union members; threatening to close or rent the warehouse because of union activities; threatening replacement of its employees if they

join the Union; or in any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Make whole Moses Machoian in the manner set forth in the section entitled "The Remedy" for any loss of pay he may have suffered from the date of Respondent's discriminatory discharge to January 24, 1950;

(b) Upon request, make available to the Board or its agents for examination and copying all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of back pay due and the right of reinstatement under the terms of this Order;

(c) Post at its warehouse in Fresno, California,

copies of the notice attached hereto and marked Appendix A.<sup>8</sup> Copies of said notice to be furnished by the Regional Director for the Twentieth Region, after being signed by a representative of the Respondent, shall be posted by the Respondent, immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(d) Notify the Regional Director for the Twentieth Region in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

(3) On August 24, 1950, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's counsel.

(4) Pursuant to Section 10(e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony and evi-

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<sup>8</sup>In the event this Order is enforced by a decree of a United State Court of Appeals, there shall be inserted before the words "Decision and Order," the words "Decree of the United States Court of Appeals Enforcing."

dence, findings of fact, conclusions of law, and order of the Board.

Therefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board, and requiring Respondent, its officers, agents, successors, and assigns to comply therewith.

By /s/ A. NORMAN SOMERS,  
Assistant General Counsel,

NATIONAL LABOR  
RELATIONS BOARD.

Dated at Washington, D. C., this 16th day of January, 1951.

### Appendix A

#### Notice to All Employees

#### Pursuant to A Decision and Order

of the National Labor Relation Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will Not discourage membership in Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or any other labor organization of our employees, by discriminatorily discharging or refusing to reinstate any of our employees, or discriminate in any other manner in regard to their hire and tenure of employment or any term or condition of employment.

We Will Not interrogate our employees concerning their union membership or activities or as to voting in the election; we will not threaten to ascertain who are members of the union; we will not threaten to close or rent the warehouse because of union activities, nor threaten to replace our present employees if they join the union.

We Will Not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, AFL, or any other labor organization, to bargain collectively in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act.

We Will make whole Moses Machoian, for any loss of pay suffered as a result of the discrimination against him.



All our employees are free to become, remain or refrain from becoming or remaining members of said union or any other labor organization except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized by Section 8(a)(3) of the Act. We shall not discriminate in regard to hire, tenure of employment, or any other term or condition of employment against any employee because of membership in or activity on behalf of any such labor organization.

Dated: .....

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY (Employer),

By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Endorsed]: Filed January 23, 1951.

[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
PETITIONER INTENDS TO RELY

In this proceeding petitioner, National Labor Relations Board, will urge and rely upon the following points:

1. The Board's findings of fact are supported by substantial evidence on the record considered as a whole.

2. The Board's conclusions of law that Respondent violated Sections 8(a)(1) and (3) are in accord with the applicable statute and judicial decision.

3. The Board's order is in all respects **valid and proper**.

4. A decree should be entered enforcing the Board's order in full.

/s/ A. NORMAN SOMERS,  
Assistant General Counsel, National Labor Relations  
Board.

Washington, D. C.

[Endorsed]: Filed January 23, 1951.

[Title of Court of Appeals and Cause.]

## ORDER TO SHOW CAUSE

The President of the United States of America

To: State Center Warehouse & Cold Storage Company, 747 R Street, Fresno, California, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 431, 1059 T Street, Fresno, California.

Greeting:

Pursuant to the provisions of Subdivision (e) of Section 160, U. S. C. A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 22nd day of January, 1951, a petition of the National Labor Relations Board for enforcement of its order entered on August 24, 1950, in a proceeding known upon the records of the said Board as

“In the Matter of State Center Warehouse & Cold Storage Company and International-Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 431, AFL., Case No. 20-CA-228”

and for entry of a decree by the United States Court of Appeals for the Ninth Circuit, was filed in the said United States Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Fred M. Vinson, Chief Justice of the United States, this 22nd day of January in the year of our Lord one thousand, nine hundred and fifty-one.

[Seal]      /s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

Return of Service attached.

[Endorsed]: Filed February 8, 1951.

[Title of Court of Appeals and Cause.]

ANSWER TO THE PETITION FOR THE EN-  
FORCEMENT OF AN ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States  
Court of Appeals for the Ninth Circuit:

The State Center Warehouse & Cold Storage Company, a California corporation, hereinafter sometimes referred to as the "Company," in accordance with the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. 111, Sec. 151, et seq.), hereinafter referred to as the "Act," answers the petition presented to the Honorable Court for the enforcement of a certain order issued by the National Labor Relations Board, hereinafter referred to as the "Board" against the Company. The proceeding in which the said order was issued by the Board is known upon the records of the Board as "In the Matter of State Center Warehouse & Cold Storage Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 431, A.F.L., Case No. 20-CA-228."

1. In answer to the said petition of the Board to this Honorable Court, the Company respectfully:

a. Admits the allegations of paragraph numbered 1 in said petition, except that it denies the commission of unfair labor practices as therein alleged;



b. Admits that the Board on August 24, 1950, issued and entered the order directing the Company which is more particularly set forth in paragraph numbered 2 of said petition, but denies that the findings of fact and conclusions of law were duly stated;

c. Admits the allegations of paragraph numbered 3, of said petition.

2. In further answer to said petition of the Board, the Company respectfully alleges that the Board's order is in excess of its power because it did not state its rulings, findings of fact and conclusions of law as required by the Act and the Administrative Procedure Act, and more particularly alleges that:

a. The Board failed as required by Section 8(b) of the Administrative Procedure Act to make a ruling or finding on each exception made by the Company to the Trial Examiner's intermediate report;

b. The Board has not stated its findings of fact as required by Section 10(c) of the Act, but has instead under the designation of "Findings of Fact" presented conclusions of fact unsubstantiated by the evidence mixed together with erroneous conclusions of law:

c. The Board has not made its findings of fact upon the preponderance of evidence as required by Section 10(c) of the Act.

3. In further answer to said petition of the Board,

the Company respectfully alleges that the findings of fact of the Trial Examiner, to which the Company excepted in its Exceptions to the Trial Examiner's Intermediate Report and Recommended Order, are not supported by the evidence.

4. In further answer to the said petition of the Board, the Company respectfully alleges that the ultimate findings of fact of the Board upon which its order is based are not supported by, but are contrary to the evidence, and more particularly, alleges that the evidence does not support the following findings of the Board in said matter:

a. The finding that Louise Mosesian made inquiries in the box car as to the employees' Union membership, made a statement, that she already knew who had signed and threatened to obtain the information elsewhere and stated or threatened on that occasion that her mother could always shut down the warehouse or rent it out;

b. The finding that Mrs. Mosesian sent a message to Ejadian, delivered through Azidigian, that if the warehouse became Union, she would release those (Union) workers and get others;

c. The finding that the Company discharged Machoian because of his Union membership and activities.

5. In further answer to said petition of the Board, the Company respectfully alleges:

That the Trial Examiner by reason of his use of matters not in evidence and his misquotation of,

misstatement of, and coloring of, the testimony all of which was acknowledged by the Board, has disqualified himself as a tester of the credibility of the witnesses, and therefore, the Company respectfully requests that such findings of fact made by him, and adopted by the Board that are based upon conflicting testimony be subjected to an independent determination by the Court.

6. In further answer to said petition of the Board, the Company respectfully alleges that the conclusions of law of the Board as to the legal effect of the findings of fact were erroneous and more particularly that the Board was erroneous in its conclusions of law that the statements found by the Board to have been made by Company officials constituted interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act.

7. In further answer to the petition of the Board, the Company respectfully alleges that it was not afforded a fair hearing for the reasons that:

a. The Trial Examiner was biased;

b. The Trial Examiner and the Board considered matters not in evidence and based their findings thereon.

8. In further answer to said petition of the Board, the Company respectfully alleges that the portions of the order of the Board set forth in the allegations of paragraph numbered 2 in said petition and more particularly paragraph 1(a) and (b) and paragraph 2(c) of said order therein set forth

shall not be enforced for the reason that the policies of the Act will not be effectuated by the enforcement of said cease and desist order, more particularly because:

a. There is no evidence to support the Trial Examiner's determination that there exists the danger that the alleged violations of Section 8(a)(1) of the Act would be continued in the future;

b. The alleged violations of Section 8(a)(1) of the Act allegedly occurred about two years ago and there is no evidence that such violations have continued;

c. No need is shown for such order.

9. In further answer to the said petition of the Board, the Company respectfully alleges that the Board acted without and in excess of its power in making and entering its conclusions of law and order in this matter by reason of the lack of evidence of the matters hereinabove more particularly set forth.

10. In further answer to the said petition of the Board, the Company respectfully alleges that objection was urged before the Board, as to the lack of evidence to support findings of the nature hereinbefore complained of as being without evidence to support them.

Wherefore, the Company prays this Honorable Court that it deny enforcement of, and set aside the said order of the Board in whole, or, if such prayer be denied that it deny enforcement of, and set aside

the said order of the Board in such part as the same is not supported by evidence, as is hereinbefore in this answer set forth with more particularity, and deny and set aside all or such portion of said order as will not effectuate the policies of the Act, and, insofar as so denied and set aside, that the Court relieve the Company, its officers, agents and representatives of any necessity to comply therewith.

Dated: Feb. 7, 1951.

STATE CENTER WAREHOUSE & COLD  
STORAGE COMPANY,

By /s/ TWODI P. MOSESIAN,  
President.

/s/ HOWARD B. THOMAS,  
Counsel for State Center Warehouse & Cold Storage Company.

[Endorsed]: Filed February 9, 1951.



[Title of Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH  
RESPONDENT INTENDS TO RELY

In this proceeding respondent, State Center Warehouse & Cold Storage Company, will rely upon the following points:

1. The Board has not complied with the procedural requirements of the Administrative Procedure Act and the National Labor Relations Act.

2. The Board's findings of fact are not supported by substantial evidence on the record as a whole.

3. The Board's conclusions of law that respondent violated Sections 8(a)(1) and (3) are erroneous.

4. The Board's order is not valid and proper.

5. The respondent was not afforded a fair hearing.

6. A decree should be entered denying enforcement of the Board's order in full or in part.

/s/ HOWARD B. THOMAS,  
Counsel for Respondent.

[Endorsed]: Filed February 9, 1951.

